RENDERED: DECEMBER 11, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000009-MR

CLINTON HAYWOOD — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 08-CI-04607

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT AND VANMETER, JUDGES; HARRIS,[1] SENIOR JUDGE.

LAMBERT, JUDGE: Clinton Haywood appeals *pro se* from the Fayette Circuit Court's order dismissing his petition for declaration of rights based on an alleged

[1] Senior Judge William R. Harris, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

violation of his due process rights during a May 14, 2008, prison disciplinary hearing. After careful review, we affirm.

On April 29, 2008, during a strip search of Haywood, Sgt. Joel Helmburg found a small baggie of tobacco tied to a string on Haywood's pants. Following an investigation, Haywood was charged with the offense of smuggling contraband items. A disciplinary hearing was held on May 14, 2008, and Haywood received written notice of the hearing on May 8, 2008. At the hearing, Haywood was found guilty of smuggling contraband based upon Sgt. Helmburg's statement that he found tobacco in Haywood's possession, as well as Haywood's statement that he did in fact possess the tobacco. As a result of this finding, Haywood forfeited sixty days of good time with an additional sixty days that was suspended, for a total of 120 days good time lost. Haywood appealed the adjustment officer's decision to the warden, and the warden concurred with the findings of the adjustment officer.

Haywood then filed a petition for declaration of rights pursuant to Kentucky Revised Statutes (KRS) Chapter 418 in Fayette Circuit Court alleging that the May 14, 2008, prison disciplinary proceedings violated his due process rights. Haywood argued that he was searched in violation of Corrections Policy and Procedure and that the smuggling contraband charge had no basis in fact.

The Fayette Circuit Court entered an opinion and order dismissing the petition on December 9, 2008, finding that Haywood received his due process rights as set out in *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 41 L.

Ed. 2d 935 (1974). Further, the court found that there was more than sufficient evidence to support the findings of the hearing officer and the consequences imposed upon Haywood. The court found that the specific charge against Haywood was appropriate and was within the discretion of the corrections officers. Finally, the court found that even if there was some failure on the part of the corrections officer to follow policy or procedure of the Department of Corrections, that afforded Haywood no relief, as the polices and procedures are not constitutional rights conferred upon inmates and thus no due process violation occurred. *Sandin v. Conner*, 515 U.S. 472, 481-82, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995).

Haywood now appeals, arguing that he was improperly charged with smuggling rather than possession of contraband; that corrections policy and procedure regarding strip searches and the confiscation of dangerous contraband was not followed; and that he was denied the right to present documentary evidence and to examine evidence.

Appellees first argue that Haywood failed to name indispensable parties on the notice of appeal and therefore this appeal should be dismissed. In support of this argument, Appellees note that when Haywood filed his petition for declaration of rights, he named Warden Kimberly Whitley and Adjustment Officer Eric Sizemore as respondents, but he failed to name either Warden Whitley or Office Sizemore on the notice of appeal to this Court. "It is well-established that failure to name an indispensable party in the notice of appeal results in dismissal of

the appeal." *Slone v. Casey*, 194 S.W.3d 336, 337 (Ky. App. 2006) (*citing City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990)); CR 19.02. The failure to name an indispensable party in the notice of appeal is more complex than a simple adding of names; this is considered a jurisdictional defect. *See Stallings*, 795 S.W.2d at 957. In this case, we find no jurisdictional defect that mandates dismissal.

The caption of Haywood's notice of appeal is styled Clinton Haywood v. Kimberly Whitley, et. al. However, the body of the notice states that the appellee will be the "Commonwealth of Kentucky." [P]oorly drafted notices of appeal can meet the jurisdictional mandate set forth in *Stallings*, so long as the court is satisfied that the notice of appeal, when reasonably read in its entirety, is sufficient to confer fair notice to all indispensable parties of their status as a party to the appeal. *See Blackburn v. Blackburn*, 810 S.W.2d 55, 56 (Ky. 1991) (dismissal not warranted where parties were named in style of action captioning the Notice of Appeal but not in body of said Notice).

Appellees cite to *Watkins v. Fannin*, 278 S.W.3d 637 (Ky. App. 2009), for the proposition that we should dismiss Haywood's appeal because he did not include Warden Whitley and Officer Sizemore in the body of the appeal. Appellees are correct in stating that *Watkins* and the Civil Rules of Procedure require an appellant to name each party that is necessary to adequate and proper appellate review and disposition in an appeal. *Id.* at 640. However, Haywood included Warden Whitley in the caption of the appeal, and therefore the instant

action can be distinguished from the facts of *Watkins*, where the Warden was not named at all in the notice of appeal, either in the body or the case caption.

In *Watkins*, the central issue before this Court was whether the Warden was an indispensible party to an appeal of a declaration of rights involving the revocation of good time. A panel of this Court determined that because the Warden was in charge of reinstating good time, he/she was an indispensible party to any appeal concerning the revocation of good time, and thus dismissed the case for failure to name the warden anywhere in the notice of appeal. Just as the Warden was an indispensable party in *Watkins*, Warden Whitley was an indispensable party to this appeal, but Haywood conferred fair notice to Warden Whitley that she was a party to this appeal by naming her in the caption on the notice of appeal. Thus we find no reason to dismiss the case for failure to name an indispensable party.

Addressing the merits of Haywood's appeal, we find no errors by the trial court, and thus affirm the court's order dismissing Haywood's petition for declaration of rights. Prison disciplinary proceedings are not criminal prosecutions and "the full panoply of rights due a defendant in such proceedings does not apply." *Wolff* , 418 U.S. at 556; s*ee also Baxter v. Palmigiano*, 425 U.S. 308, 315-16, 96 S. Ct. 1551, 1557, 47 L. Ed. 2d 810 (1974). Prison disciplinary proceedings are civil, administrative actions. In *Wolff*, the Supreme Court held that procedural due process, in the context of prison disciplinary proceedings, requires: "(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 defense; and (3) a written statement by the fact finder of the evidence relied upon and the reasons for the disciplinary actions." *Superintendent Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985) (summarizing *Wolff*, 418 U.S. at 563-67).

The prison authorities satisfied all of the due process requirements under *Wolff*. Part I and II of the disciplinary report form show that Haywood received advance notice on May 8, 2008, of the May 14, 2008, disciplinary hearing; no witnesses were requested by Haywood; and the adjustment officer provided a written statement of the evidence relied upon and the reasons for the disciplinary actions. While Haywood appears to concede that he received the due process set forth in the paragraph above, he argues that he was denied the opportunity to present documentary evidence and to examine evidence. However, Haywood never articulates what documentary evidence he sought to present or examine. To the extent this is an extension of Haywood's argument that the evidence against him lacked a chain of custody verification due to the officer's failure to properly confiscate the contraband, this claim has no merit. Haywood admitted to having the tobacco in his possession, and therefore documentation showing that the officer failed to follow the administrative procedures set forth on the prison's chain of custody form was irrelevant. Thus, any introduction of such documentation by Haywood would have been futile, given that he admitted to having the tobacco in question.

In addition to the requirement of due process provided in *Wolff*, there must have been "some evidence" to support the adjustment officer's finding that Haywood committed the infraction charged. *See Hill*, 472 U.S., at 454. In determining the existence of "some evidence," the analysis "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of evidence." *Id.* at 455-56. Rather, "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Id.* at 455-56. If "some evidence" exists that supports the decision arrived at by the prison disciplinary board, it may not be disturbed on appeal. *Id.* at 455.

This Court acknowledged the United States Supreme Court's approval of the minimum Fourteenth Amendment due process requirements for prison disciplinary proceedings, noting that this was necessary "to balanc[e] the prison administrator's profound interest in maintaining order against the inmate's relatively minor interest in avoiding a portion of his sentence." *Smith v. O'Dea*, 939 S.W.2d 353, 357 (Ky. App. 1997). The Court went on to hold that the "judicial deference" provided to prison disciplinary bodies under federal law was required under the Kentucky Constitution as well. *Id.* at 358.

Thus, if there is any evidence in the record that could support the conclusion reached by the disciplinary board, that decision must be upheld. In the instant case, the evidence in the record is that Sgt. Helmburg found a small baggie of tobacco tied to the drawstring of Haywood's sweatpants and tucked down into

his waistline. Haywood acknowledged that he had this tobacco. Thus, there was "some evidence" to support the disciplinary board's conclusion and we will not disturb that conclusion on appeal.

The bulk of Haywood's argument, both at the circuit court level and here on appeal, is that corrections policy and procedure was violated during Sgt. Helmburg's search and during the confiscation of the contraband. However, any failure to comply with corrections policy and procedure was not a violation of due process. A state's implementation of procedural directives to guide prison administrators, such as the directives contained in the corrections policy and procedure, does not create protected liberty or property interests under the U.S. Constitution. *Levine v. Childers*, 101 F.3d 44, 46 (6th Cir. 1996); *Levine v. Torvik*, 986 F.2d 1506, 1516 (6th Cir. 1993). "Prison regulations primarily designed to guide correctional officials in the administration of a prison," such as those at issue herein, are not "designed to confer rights on inmates." *Sandin*, 515 U.S. at 481-82. Thus, any failure of Sgt. Helmburg to follow Corrections Policy and Procedure did not constitute a due process violation against Haywood.

Finally, Haywood argues that he was improperly charged with smuggling rather than possession. However, it appears from the record that the charge of smuggling was also appropriate, given that Haywood was carrying, transporting, or bearing a small baggie of tobacco, and could have been engaged in activity that fits within the definition of smuggling. While such activity also fits in the description of possession, that does not preclude the smuggling charge. The

"some evidence" standard does not require that the evidence logically preclude any conclusion but the one reached by the hearing officer. *See Webb v. Sharp*, 223 S.W.3d 113, 121 (Ky. 2007).

In conclusion, Haywood's due process rights were not violated and the trial court properly dismissed Haywood's petition for declaration of rights. Accordingly, we affirm the Fayette Circuit Court's December 9, 2008, order dismissing Haywood's petition for declaration of rights.

ALL CONCUR.

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