

RENDERED: JANUARY 6, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000855-MR

DARIUS BURDELL

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT  
HONORABLE THOMAS P. JONES, JUDGE  
ACTION NO. 06-CI-00119

R. STOVALL; LT. MIKE BOWLING; DANNY LANE;  
LAURA KASH; and JAMES COMBS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: LAMBERT, NICKELL, AND WINE, JUDGES.

WINE, JUDGE: Darius Burdell (“Burdell”), *pro se*, appeals from the denial of his petition for a declaration of rights by the Lee Circuit Court. On appeal, Burdell asserts that he was deprived of his due process rights under the 14<sup>th</sup> Amendment and Sections 2, 3, 10, 11, and 14 of the Kentucky Constitution in connection with disciplinary charges brought against him while an inmate in a state prison. We

disagree and affirm the trial court's grant of summary judgment in favor of the appellees.

### **History**

Burdell was incarcerated at the Lee Adjustment Center in Beattyville, Kentucky. While Burdell was incarcerated, an investigation was undertaken by Lee Adjustment Center officials regarding the smuggling of illegal drugs into the facility. As part of an investigation, James Combs ("Combs"), an investigator for the Lee Adjustment Center, listened to telephone conversations between inmates and their friends and/or family members for discussions about illegal drugs in an attempt to ascertain how the illegal drugs were being brought into the facility. Combs learned that friends or family members would drop off drugs at a specified location for an employee of the facility to pick up and bring into the facility.

In one particular conversation between Burdell and another individual, Burdell discussed a specific pickup location outside the facility, although he did not specifically mention illegal drugs. Combs testified at the hearing that prisoners were aware their conversations were monitored by the jail and, therefore, often used other language or code words to describe the drugs. Nonetheless, Burdell was not immediately charged after the phone conversation. Instead, investigators waited to see if the correctional officer showed up at the pick-up site Burdell had indicated in the conversation. Investigators indeed caught the correctional officer in question picking up illegal drugs at the location Burdell specified in the telephone conversation.

Institutional disciplinary charges were brought against Burdell on May 1, 2006, for the possession or promotion of dangerous contraband. Prison disciplinary charges were also brought against several other inmates in connection with the sting, and formal criminal charges were brought against the correctional officer. The disciplinary report form indicates that Burdell made no statement, waived twenty-four hour notice of the hearing, and requested no witnesses. However, Burdell pled not guilty and requested a legal aid representative at the hearing.

The hearing was conducted the following day, on May 2, 2006. Combs testified at the hearing, and Burdell was found guilty based upon this testimony. His punishment was ninety days of disciplinary segregation and the revocation of one hundred eighty days of good time credit. Burdell appealed to Warden Stovall of the Lee Adjustment Center. Warden Stovall reduced Burdell's penalty to the loss of one hundred eighty days of good time credit and dismissed the ninety days of segregation time.

Unsatisfied with this result and seeking a full reversal, Burdell filed a petition for a declaration of rights in the Lee Circuit Court. The Lee Circuit Court entered summary judgment in favor of the Commonwealth on the Commonwealth's motion. Burdell, *pro se*, now appeals from the summary judgment entered by the Lee Circuit Court.

On appeal, Burdell argues that he was denied due process because: (1) the hearing was held within twenty-four hours of the disciplinary report charging

him; and (2) he was given only a few minutes before the hearing to discuss a defense with his appointed counsel.

Prison disciplinary hearings at which an inmate's good time credit may be affected must comply with procedural due process. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974-75, 41 L.Ed.2d 935 (1974). At a minimum, a prisoner must receive notice of the charges, an opportunity to present evidence in his defense, and a report containing the committee's reasoning and conclusions. However, "[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." *Id.* at 556. As such, upon review of a prison disciplinary action, we will find that the requirements of due process have been satisfied so long as "*some evidence* supports the decision by the prison disciplinary board . . . ." *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985) (emphasis added), *as adopted by Smith v. O'Dea*, 939 S.W.2d 353, 358 (Ky. App. 1997).

In the present case, we find that the prison board's decision was supported by some evidence as, after the telephone conversation in question, a correctional officer was found picking up drugs at the location specified by Burdell in the telephone call. Regardless, Burdell's argument on appeal is unsupported by the record as Burdell marked "yes" on the disciplinary report form in response to the question "Does inmate waive 24 hour notice?"

In light of the foregoing, we affirm the summary judgment of the Lee  
Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Darius Burdell, *pro se*  
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

G. Edward Henry, II  
Lexington, Kentucky