

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

NO. 2010-CA-001581-MR

BRYAN MITCHAM

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN CONRAD, JUDGE  
ACTION NO. 10-CI-00343

COOKIE CREWS, WARDEN, KSR;  
COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF CORRECTIONS;  
JEANNETTE WALLS,  
KSR ADJUSTMENT COMMITTEE  
CHAIRMAN; JOSPEH WOODS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: STUMBO AND THOMPSON, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

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<sup>1</sup> Senior Judge Ann O'Malley Shake 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.

SHAKE, SENIOR JUDGE: Bryan Mitcham appeals, *pro se*, from an Oldham Circuit Court Order dismissing his petition for declaration of rights challenging the adjustment committee's findings that he unlawfully possessed dangerous contraband. Considering Mitcham's reduced due process rights and concluding that the appellate record does not support the basis of his appeal, we affirm the Oldham Circuit Court.

Mitcham is an inmate at the Kentucky State Reformatory, located in LaGrange, Kentucky. On November 19, 2009, prison officials found Mitcham in possession of two pornographic DVDs concealed inside a Playstation 2 video game box. On January 15, 2010, a prison disciplinary hearing was held concerning the violations. Mitcham was found guilty of possessing or promoting dangerous contraband and was sentenced to 90 days of disciplinary segregation and restricted visitation for one year.

Mitcham petitioned the Oldham Circuit Court for a declaration of rights. Mitcham claimed that pornography is not dangerous contraband. The Circuit Court dismissed his petition. This appeal follows.

To begin our analysis, we first recognize that prison inmates facing disciplinary actions are not entitled to the same rights as other non-institutionalized persons who are criminally charged. *Wolff v. McDonnell*, 418 U.S. 539, 561-562, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Inmates receive only minimal due process

rights. *Smith v. O’Dea*, 939 S.W.2d 353, 357 (Ky. App. 1997). “[A] highly deferential standard of judicial review is constitutionally appropriate with respect to both the factfinding that underlies prison disciplinary decisions and the construction of prison regulations.” *Id.*

Further, inmates do not have a constitutionally protected right to remain in the general prison population. *Marksberry v. Chandler*, 126 S.W.3d 747, 751 (Ky. App. 2004). In order to prevail on a due process claim concerning a segregation sentence, Mitcham would have to show that the sanction imposed an “atypical and significant hardship on [him] in relation to the ordinary incidents of prison life.” *Id.* at 750. Mitcham failed to present evidence to indicate that the effects of segregation or segregation conditions differed from routine prison conditions.

Mitcham primarily argues that, while pornography may constitute contraband, it does not constitute dangerous contraband. KRS 520.010(1) defines contraband as “any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, departmental regulation, or posted institutional rule or order.” KRS 520.010(3) distinguishes dangerous contraband as contraband,

which is capable of use to endanger the safety or security of a detention facility or persons therein, including, but not limited to, dangerous instruments as defined in KRS 500.080, any controlled substances, any quantity of an alcoholic beverage, and any quantity of marijuana, and saws, files, and similar metal cutting instruments. . .

Although pornography is not specifically described in KRS 520.010(3), the Department of Corrections considers some pornography a threat to the safety of prison guards and inmates, able to incite riots, and a contributing factor to a dangerous environment.

Under Corrections Policies and Procedures (CPP) 15.2, possession of contraband constitutes a minor violation. However, possession of dangerous contraband constitutes a major violation and subject to the same penalty range as escape, prostitution, and possession or distribution of child pornography. The pornographic DVDs possessed by Mitcham had been smuggled into the facility and concealed in a video game box. The record contains no description whatsoever of the DVDs' contents. However, Mitcham received notice of the charge and was afforded a hearing during which he had the opportunity to present witnesses. Mitcham failed to articulate any facts to support his argument that the DVDs constituted merely contraband instead of dangerous contraband. The hearing officer determined that he was guilty as charged of possession of dangerous contraband.

Whether contraband is dangerous contraband is uniquely a discretionary call for the fact-finder which we will not disturb. It is undisputed that he had unauthorized pornography hidden in his possession. That alone in the context of the prison setting can constitute some evidence of dangerous contraband brought into the institution.

Accordingly, the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bryan Mitcham  
*Pro Se*

LaGrange, Kentucky

BRIEF FOR APPELLEE:

Angela T. Dunham  
Department of Corrections

Frankfort, Kentucky