

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000382-MR

JOSE RAMIREZ

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 10-CI-00269

TRACY NIETZEL, IN HER CAPACITY AS
ADJUSTMENT HEARING OFFICER AT THE
NORTHPOINT TRAINING CENTER; AND THE
KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Jose Ramirez, *pro se*, has appealed from the Boyle Circuit Court's August 2, 2010, order denying his declaratory judgment action which requested review of a prison disciplinary proceeding. For the following reasons, we affirm.

Ramirez was an inmate at the Northpoint Training Center on August 18, 2009. He was the subject of a disciplinary report stemming from an assault on that date which resulted in two inmates, Henry Rodgers and Ricky Lee, being seriously injured. While Lee was treated by medical staff at Northpoint Training Center, Rodgers was taken to a nearby hospital for treatment of his injuries. An investigation into the assault was conducted by Captain Gary Frederick who drafted the formal disciplinary charges against Ramirez. Capt. Frederick gave Ramirez a copy of the write-up and investigatory report. Ramirez requested Rodgers and inmate Luis Pena-Martinez be called as witnesses in his disciplinary hearing and that a copy of surveillance video be provided to him. He was assigned an inmate legal aide to assist in his defense.

A hearing was held before Adjustment Officer Tracy Nietzel on October 26, 2009. Nietzel reviewed Capt. Frederick's investigatory report. She allowed Pena-Martinez to testify via telephone but denied the request to have Rodgers testify citing institutional security concerns. The requested video surveillance footage was denied on the same grounds. Ramirez was found guilty on the charge of physical action resulting in death or serious physical injury to another inmate and was assessed a penalty of 180 days in solitary confinement, loss of two years of non-restorable good time credit, and was ordered to pay restitution in the amount of \$556.17. His appeal to the warden was unsuccessful. Ramirez subsequently filed his declaration of rights action pursuant to KRS¹

¹ Kentucky Revised Statutes.

418.040 in the Boyle Circuit Court to contest the disciplinary action taken against him. The circuit court denied the petition in a three-page order and this appeal followed.

Ramirez contends the evidence presented did not support a finding of serious physical injury. He further argues his due process rights were violated by Nietzel's denials of his requests for Rodgers to testify and for access to the videotaped surveillance footage, and by a "failure to follow corrections (sic) own policy and procedures in this case." Having reviewed the record, we discern no error and affirm.

It is the duty of prison officials to determine guilt or innocence in prison disciplinary proceedings. Courts are charged only with review of the decisions of the Adjustment Officer and prison officials are afforded broad discretion. This Court must affirm if there is "some evidence" supporting the charge. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). *See also Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997) (adoption by Kentucky courts of the federal standard). "[T]he relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary [officer]." *Hill*, 472 U.S. at 456, 105 S.Ct. at 2774. Even "meager" evidence has been found to meet this burden. *Id.*, 472 U.S. at 457, 105 S.Ct. at 2775. "Ascertaining whether this standard is satisfied does not require examination of the entire record, independent

assessment of the credibility of witnesses, or weighing of the evidence.” *Id.*, 472 U.S. at 455, 105 S.Ct. at 2774.

Prison discipline proceedings are not equivalent to criminal prosecutions and “the full panoply of rights due a defendant in such proceedings does not apply.” *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). “Minimal due process is all that is required regarding a person detained in lawful custody.” *McMillen v. Kentucky Dept. of Corrections*, 233 S.W.3d 203, 205 (Ky. App. 2007). The requirements of due process are satisfied if the “some evidence” standard is met. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774.

Ramirez argues he was denied procedural due process because his requested witness was rejected as was his request for surveillance footage of the incident. However, he has failed to allege any facts that would demonstrate that a due process violation has occurred here. Nietzel declined his requests because she believed that granting them would be unduly hazardous to the security of the institution. Prisons are highly charged environments populated with individuals who have proven a propensity to violate the criminal laws and have been incarcerated for doing so. Such environments must be tightly controlled for the protection of the prison workers as well as the inmates themselves. As stated earlier, prison officials are given broad discretion by this Court, and that discretion extends to determinations of how best to maintain order and safety within the walls of penal institutions. We cannot say the decision of the hearing officer here

deprived Ramirez of a protected liberty or property interest. *Williams v. Bass*, 63 F.3d 483, 485 (6th Cir. 1995).

Likewise, we are unconvinced Ramirez has demonstrated a violation of his due process rights by Nietzel's alleged failure to follow Kentucky Department of Corrections Policies and Procedures (CPP) in preparing the written report following his hearing. Ramirez is correct that written findings are required in prison disciplinary proceedings as to the facts relied on and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 564, 94 S.Ct. at 2963. However, the findings may be brief, *Gilhaus v. Wilson*, 734 S.W.2d 808, 810 (Ky. App. 1987), and an adjustment officer may incorporate by reference the findings of the investigating officer contained in his report. *Yates v. Fletcher*, 120 S.W.3d 728 (Ky. App. 2003). This was the procedure followed in the instant case. The findings were sufficient and the requirements of minimum due process were satisfied.

Finally, Ramirez contends the evidence presented was insufficient to support a conviction of the charged infraction. However, the evidence submitted at the adjustment hearing was sufficient to satisfy the "some evidence" standard. Nietzel adopted the facts set forth by Capt. Fredrick in the disciplinary report form, and these facts supported the adjustment officer's findings of guilt. Given our limited authority to review cases such as these, nothing more need be considered.

For the foregoing reasons, the decision of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jose Ramirez, *pro se*
Central City, Kentucky

BRIEF FOR APPELLEE:

Wesley W. Duke
Justice & Public Safety Cabinet
Frankfort, Kentucky