

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

NO. 2011-CA-000593-MR

JOHNNY A. MCDONALD

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL III, JUDGE  
ACTION NO. 10-CI-00170

PHILIP W. PARKER, WARDEN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, KELLER, AND NICKELL, JUDGES.

DIXON, JUDGE: Johnny Anthony McDonald appeals the Lyon Circuit Court's dismissal of his declaratory judgment action challenging a prison disciplinary proceeding. We affirm.

On August 1, 2010, McDonald was an inmate at the Kentucky State Reformatory. During an interview with Sgt. Marlene Sheets, McDonald began

cursing and pointing his finger in Sheets' face. As other officers arrived, McDonald became combative and two officers sustained minor hand injuries during their efforts to subdue McDonald. As McDonald was being escorted from the office, he attempted to spit on Sgt. Sheets and threatened to stab two of the officers. McDonald received seven disciplinary violations charging him with violent demonstration, refusing to obey an order, making threatening statements, and four charges of physical action against an employee.

McDonald was assisted by an inmate legal aide at the adjustment committee hearings, which were held on August 4, and August 11, 2010. The committee found McDonald guilty of the charged offenses and imposed punishment of 840 days in disciplinary segregation. McDonald appealed the decision to the warden, who concurred with the committee.

McDonald filed a petition for declaration of rights in Lyon Circuit Court alleging the disciplinary hearings did not comport with procedural and substantive due process. McDonald requested that the court expunge the convictions from his disciplinary record, order his release from segregation with transfer to a different prison, and award punitive damages of \$10.00 per day for each day of segregation. The Appellee responded to McDonald's petition and moved to dismiss. The court concluded McDonald failed to demonstrate a constitutional deprivation warranting relief and granted Appellee's motion to dismiss on March 4, 2011. This appeal followed.

McDonald raises eight issues on appeal to this Court. After reviewing the record, regulations, and applicable law, we conclude the trial court properly dismissed McDonald's petition. As many of McDonald's allegations are related, we will combine them in our analysis.

We first address a procedural matter. In his notice of appeal, McDonald named "Philip Parker, Warden, et al" as the Appellee in this matter. McDonald failed to include in his notice of appeal the twelve prison employees he had identified in his circuit court petition. A notice of appeal transfers jurisdiction of the case to the appellate court; consequently, this Court does not have jurisdiction over parties not named in the notice of appeal. *Watkins v. Fannin*, 278 S.W.3d 637, 639-40 (Ky. App. 2009). Since we do not have jurisdiction over the individual prison employees, we will not address McDonald's claims against those employees regarding due process violations and qualified immunity.

McDonald argues the circuit court erred by failing to conduct a de novo review of the disciplinary proceedings. Such review, McDonald contends, would have revealed "numerous" due process violations, including 1) the investigating officer failed to collect evidence, 2) the adjustment committee rendered inadequate findings, and 3) disciplinary segregation was improperly imposed as punishment.

It is evident the circuit court applied the correct standard of review in this case. An adjustment committee's decision is entitled to deference on judicial review; consequently, the disciplinary action will be upheld if it is supported by

“some evidence” in the record. *Id.* at 356. Despite McDonald’s argument to the contrary, he was not entitled to de novo review.

During prison disciplinary proceedings, a prisoner is entitled to a limited form of due process, affording the prisoner “notice of the charges, a reasonable opportunity to be heard, and a brief written finding suitable for judicial review.” *Smith v. O’Dea*, 939 S.W.2d 353, 357 (Ky. App. 1997). McDonald has failed to demonstrate that he was denied these due process rights during the disciplinary process, as 1) he had notice of the charges against him, 2) he had the opportunity to call witnesses but declined to do so, and 3) he received a written statement to support the committee’s findings of guilt. The record indicates the disciplinary reports were reviewed by a supervisor and investigating officer. On each report, the investigator noted McDonald refused to provide information regarding the incident. McDonald appeared at the hearings with a legal aide, and he chose not to call witnesses. The adjustment committee noted McDonald pled not guilty to the charges; however, the committee found the statements of the officers involved in the incident to be credible evidence of guilt.

We are not persuaded by McDonald’s criticism of the investigation and committee findings. It is clear that an investigation was conducted and the committee properly relied on the officers’ statements to find McDonald guilty of the charges. Furthermore, the committee’s subsequent imposition of disciplinary segregation did not implicate McDonald’s liberty interest under the due process clause. *Sandin v. R.D. Conner*, 515 U.S. 472, 485-86, 115 S. Ct. 2293, 132 L. Ed.

2d 418 (1995). The committee’s decisions were supported by evidence in the record; accordingly, the circuit court correctly dismissed McDonald’s petition.

Finally, the trial court properly dismissed McDonald’s claim for punitive damages. Pursuant to KRS 454.405(5), “No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.” McDonald asserts he had a mental disorder and that the officers used unnecessary force to restrain him. Despite these allegations, we agree with the lower court that the record clearly shows McDonald did not suffer a physical injury.

For the reasons stated herein, we affirm the Lyon Circuit Court’s order of dismissal.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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