

RENDERED: OCTOBER 26, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001238-MR

LARRY E. WATKINS-EL

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 10-CI-00198

GARY BECKSTROM, ACTING WARDEN;
AND LT. BUCKNER, HEARING OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, MAZE, AND TAYLOR, JUDGES.

CLAYTON, JUDGE: This is an appeal of the dismissal of the Appellant, Larry E.

Watkins-El's, declaration of rights action by the Morgan Circuit Court. Based

upon the following, we affirm the decision of the trial court.

BACKGROUND INFORMATION

Watkins-El is an inmate at the Eastern Kentucky Correctional Complex (EKCC). He was found guilty of Obtaining Privileges or Services under False Pretenses-Inchoate 1C after another inmate, Juan Sanders asked Kelly Nickles, a Classification and Treatment Supervisor, to make copies of an appeal and a personal letter belonging to Watkins-El was discovered within the materials. Watkins-El was penalized thirty (30) days in disciplinary segregation based upon the fact that he allowed another inmate to make and pay for his copies.

Watkins-El filed an appeal with the Acting Warden, Gary Beckstrom, arguing that it had been a mistake. Warden Beckstrom concurred with the Adjustment Officer's decision. Watkins-El then brought a declaration of rights action in Morgan Circuit Court which was dismissed on May 20, 2011. This appeal followed.

DISCUSSION

The case of *Wolff v. McDonnell*, 418 US 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974), provides that prison disciplinary proceedings are not criminal prosecutions, but are civil, administrative actions. Consequently, the prisoner does not have the same rights he would have at a criminal trial. Instead, procedural due process in a prison disciplinary proceeding requires the following:

- (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 factfinder of the evidence relied and the reasons for the disciplinary action.

Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985), citing *Wolff*, 418 US at 563-67, 94 S. Ct. 2978-2980.

In this appeal, Watkins-El first contends that the circuit court erred when it ruled that he had not been deprived of a liberty interest or property interest that would give rise to a due process violation. Watkins-El received thirty (30) days of disciplinary segregation after he was found guilty. He did not receive any loss of good-time credits and, pursuant to *Marksberry v. Chandler*, 126 S.W.3d 747, 749 (Ky. App. 2003), such is not a significant hardship which would trigger due process violations. Thus, we uphold the trial court's dismissal of Watkins-El's action on this issue.

Watkins-El also contends that the circuit court erred in ruling that he had not demonstrated a deprivation of due process rights under the United States Constitution. In order for an inmate to have a claim of deprivation of due process, he must demonstrate that either a protected liberty or property interest was involved. See *Williams v. Bass*, 63 F.3d 483, 485 (6th Cir. 1995). As set forth in *Wolff, supra*, even minimal due process will achieve this goal.

In this case, Watkins-El was informed of the charge against him on June 26, 2010, through written notice. He pled not guilty and requested aid in preparing for his adjustment hearing. He did not call witnesses, but stated later in his appeal to the Warden that he was denied the testimony of the prison librarian on his behalf. It was not the librarian, however, but CT Supervisor Nickles's report that was the basis for the charge against Watkins-El.

Watkins-El was also provided a written statement regarding his finding of guilt and the evidence relied upon by the Adjustment Officer in making the finding. The evidence included the testimony of CT Supervisor Nickles regarding the incident and the events surrounding it. In *Hill*, 472 U.S. at 455-56, 105 S. Ct. at 2774, the Court held in prison disciplinary proceedings, that the "relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." See also *Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997). In this case, there was first hand evidence of what had occurred. As the Circuit Court found, Watkins-El received due process and we affirm the dismissal of his action.

ALL CONCUR.

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