

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001598-MR

JOHN L. DANIELS

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 11-CI-00465

KIMBERLY THOMPSON, CTO RRC;
TROY FREEMAN, CHAIRMAN ADJUSTMENT
COMMITTEE, RCC; JAMES SWEATT,
WARDEN, RCC; COMMONWEALTH OF
KENTUCKY, CRIMINAL APPELLATE DIVISION,
HON. JACK CONWAY

APPELLEES

OPINION AND ORDER
AFFIRMING AND DENYING MOTION AS MOOT

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KELLER, JUDGES.

CLAYTON, JUDGE: This is an appeal by an inmate after prison disciplinary action was taken against him. Based upon the following, we affirm the decision of the Oldham Circuit Court.

BACKGROUND INFORMATION

Appellant, John Larry Daniels, is an inmate at the Roederer Correctional Complex (“RCC”). On June 15, 2011, Daniels asked Assessment staff member Kimberly Thompson if he could give Ms. Webster some drawings he had made. Thompson filed a disciplinary report due to this behavior on June 16, 2011. Daniels was then charged with pursuing/having a non-correctional relationship with a non-inmate. Daniels waived his twenty-four hour notice and his disciplinary hearing was held on June 17, 2011.

Daniels did not provide notice that he was calling any witnesses and findings were made based upon the Classification and Treatment Officer’s (CTO) statement and the report of the investigating officer. Daniels was found guilty and was given a thirty-day assignment to disciplinary segregation, suspended for ninety days; and forfeiture of sixty days of good time credit. Daniels appealed this decision to the warden who concurred with the adjustment officer. Daniels then appealed his decision to the Oldham Circuit Court where his petition was dismissed. This appeal followed.

DISCUSSION

The case of *Wolff v. McDonnell*, 418 U.S. 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 his defense; and
- (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.

Superintendent, Massachusetts Corr. Inst., Walpole v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773 (1985), citing *Wolff*, 418 U.S. at 563-567, 94 S. Ct. at 2978-2980.

In the present case, Daniels does not contend that he did not receive a written notice and the incident report sets forth the charges and the actions leading to the charges being brought. Daniels does, however, assert that he was not able to call Webster as a witness at his hearing. Daniels did not identify any witnesses on the Disciplinary Report Form. While he attempted to call Webster at the hearing, he was not allowed to because he had not given twenty-four hours notice of his intention. The Appellees contend that the twenty-four hour notice requirement is in keeping with *Wolff's* allowance that the inmate is entitled to call witnesses when such is consistent with the institution's safety and correctional goals. We agree and hold that twenty-four hours' notice is appropriate and does not impinge on the prisoner's procedural due process rights. Thus, we affirm the trial court's denial of his appeal on this issue.

Daniels also argues that Investigator Ronald L. Fannin should not have been allowed to investigate his case since the incident complained of occurred at RCC

and that Fannin is a Kentucky State Reformatory (“KSR”) officer. We disagree.

As an investigator, Fannin gathered evidence and advised Daniels of the charges against him. While the investigation was taking place, Daniels was an inmate at KSR. Thus, we find it reasonable that a KSR officer would be the investigator.

Daniels also asserts that it was inappropriate because Fannin was not involved in the incident. Corrections Policy and Procedure (“CPP”) 15.6, however, specifically sets forth that an investigation should be conducted by someone who is not involved in the incident. We find this to be a reasonable and objective requirement. Daniels points to no specific issues with Fannin’s investigation. We, therefore, affirm the trial court’s denial of his appeal on this issue.

Finally, Daniels argues that he is entitled to work for time credits for prison jobs that he performed between 2005 and 2008. CPP 19.2(1) provides that “[w]ork time credit’ means a time credit earned by performing work in an approved job assignment after March 31, 2003, that shall be deducted from an eligible inmate’s sentence calculation, as provided in [Kentucky Revised Statutes] KRS Chapter 197.” KRS 197.047(6) sets limitations on work time credit eligibility. The credits do not apply to inmates who are serving a sentence of imprisonment without the possibility of parole; a sentence for a violent offense (KRS 439.3401); a sentence for escape or attempted escape; or, a sentence for a sex crime (KRS 17.500). Here, Daniels was serving a sentence for second-degree

escape. Thus, he is not entitled to work time credit. Based upon the issuance of this opinion, the Appellant's motion to advance the appeal is ORDERED DENIED AS MOOT.

For the above reasons, we affirm the decision of the trial court.

ALL CONCUR.

ENTERED: October 26, 2012

BRIEF FOR APPELLANT:

John L. Daniels, Pro Se
West Liberty, Kentucky

/s/ Denise G. Clayton
JUDGE, COURT OF APPEALS
BRIEF FOR APPELLEES,
KIMBERLY THOMPSON, CTO
RRC; TROY FREEMAN,
CHAIRMAN ADJUSTMENT
COMMITTEE, RCC; JAMES
SWEATT, WARDEN, RCC:

Angela T. Dunham
Department of Corrections
Frankfort, Kentucky

NO BRIEF FILED FOR APPELLEE,
COMMONWEALTH OF
KENTUCKY, CRIMINAL
APPELLATE DIVISION, JACK
CONWAY