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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001978-MR

LARRY CURTIS CLIFTON

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 10-CI-00308

LT. ROY D. BUCKLER

APPELLEE

OPINION AND ORDER DISMISSING

** ** * * * * *

BEFORE: MOORE, STUMBO AND VANMETER, JUDGES.

VANMETER, JUDGE: Larry Clifton appeals *pro se* from an order of the Morgan Circuit Court dismissing his petition for a declaration of rights regarding his claim that his due process rights were violated when he was ordered to pay restitution following a disciplinary hearing conducted by prison authorities. Since Clifton failed to name an indispensable party, we dismiss this appeal.

Clifton is an inmate at Eastern Kentucky Correctional Complex in West Liberty, Kentucky. On May 21, 2010, Clifton was involved in a fight with another inmate, who suffered a broken leg as a result. Lieutenant Roy Buckler, Chairman of the Adjustment Committee (“Committee”), conducted a disciplinary hearing regarding the incident, found Clifton guilty, and assigned him to disciplinary segregation for 45 days and ordered him to pay one-half of the medical costs incurred by the injured inmate. Clifton appealed the decision to the warden, only contesting the issue of restitution.¹ The warden concurred with the Committee.

Clifton then filed the underlying petition for a declaration of rights, asserting that his due process rights were violated at the disciplinary hearing. The circuit court dismissed the petition on its merits. This appeal followed.

On appeal, Clifton argues the circuit court erred by determining that no due process violation occurred when he was ordered to pay restitution costs. We may not address the merits of this argument, however, since the warden is a necessary and indispensable party to this appeal and was not named as a party. In his absence, we are without jurisdiction to address the merits, and the appeal must be dismissed.

A party invokes an appellate court’s jurisdiction by way of the notice of appeal. *Nelson County Bd. of Educ. v. Forte*, 337 S.W.3d 617, 626 (Ky. 2011) (citation omitted). The failure to name an indispensable party constitutes a jurisdictional defect which cannot be remedied. *Id.* (citation omitted). An

¹ The name of the Warden at Eastern Kentucky Correctional Complex is not a part of the record.

indispensable party is necessary for the court to grant complete relief among those parties already joined in the proceeding. *Liquor Outlet, LLC v. Alcoholic Beverage Control Bd.*, 141 S.W.3d 378, 386 (Ky.App. 2004) (citing *Milligan v. Schenley Distillers, Inc.*, 584 S.W.2d 751, 753 (Ky.App. 1979)). Having reviewed the policies of the Department of Corrections, statutes, and analogous case law, we conclude that the warden was an indispensable party because he had the final authority to reduce the penalty or void the disciplinary report.

The case at bar is analogous to *Watkins v. Fannin*, 278 S.W.3d 637 (Ky.App. 2009), in which a prisoner appealed the denial of his petition for a declaration of rights that asserted he was denied due process when the Committee revoked two years' of good-time credit after finding him guilty of intentionally bumping a corrections officer. This court dismissed the appeal, holding that Watkins failed to name the warden as a necessary and indispensable party to the appeal. In reaching its conclusion, this court described in detail the delegation of authority to the wardens of state penitentiaries, stating:

The Legislature [] authorized the promulgation of “administrative regulations for the government and discipline of the penitentiary . . . and for the government of the prisoners in their deportment and conduct[.]” KRS^[2] 197.020(1)(a). Presumably recognizing that prisoner discipline is best conducted at the individual prisons, the Legislature also granted the Secretary of the Justice and Public Safety Cabinet, which oversees the Department, authority to “delegate to any person appointed the power and authority as he or she deems

² Kentucky Revised Statutes.

reasonable and proper for the effective administration of the cabinet.” KRS 196.035.

The bulk of the power and authority in the area of prisoner discipline has been properly delegated to the wardens of the various penal institutions of Kentucky. Among the many Kentucky Corrections Policies and Procedures (KCPP) developed and adopted as law to govern prison administration is KCPP 15.6, entitled “Adjustment Procedures and Programs,” made law by its incorporation by reference in 501 Kentucky Administrative Regulations (KAR) 6:020.³ This policy describes the breadth of and limitations upon the authority granted to the wardens in adjusting, or forfeiting, the good time credit earned by a prisoner when he is accused of violating a prison rule.

Pursuant to Section II of KCPP 15.6, every “alleged violation of [] rules and regulations shall be fairly processed.” Section II(C)(1)(a) requires a prison employee with personal knowledge of an alleged violation to prepare a disciplinary report of the incident. The report is submitted to a shift supervisor for review. KCPP 15.6 Section II(C)(3). The shift supervisor reviews the report for compliance with the reporting policy and signs it. KCPP 15.6 Section II(C)(4)(a). A supervisor not involved in the incident then begins an investigation of the allegations in the disciplinary report. KCPP 15.6 Section II(C)(4)(b).

The disciplinary report is presented to an adjustment officer; copies of the report and all documentary evidence, including written statements, are simultaneously given to the prisoner. KCPP 15.6 Section II(C)(4)(b)(3)(a)-(c).

Section II(D) requires the adjustment officer to conduct a hearing after which she prepares a written record of the proceedings, including a statement of the

³ KCPP 15.6 may be viewed on the Kentucky Department of Corrections website, <http://www.corrections.ky.gov/about/chapter15.htm>, under “Chapter 15 Inmate Rules and Discipline, 15.6, Adjustment Procedures and Programs.”

discipline to be imposed. A copy is provided to the prisoner.

The disciplinary report is then “routed to the Warden or his designee for his signature” for “administrative . . . review[.]” KCPP 15.6 Section II(E) and (F)(6). However, the prisoner also has the right to appeal the disciplinary report to the warden who will then undertake an “appellate review” of the prisoner’s case. KCPP 15.6 Section II(F)(1) and (6). The warden has the authority to:

- a. order a rehearing because of procedural errors, substantive errors, or other appropriate reasons;
- b. reduce the penalty[;]
- c. suspend the penalty for a period of time not to exceed six (6) months[;]
- d. void the disciplinary report in its entirety[;]
- e. reduce the category of violations[;]
- f. remand the charge for a new hearing before a different Adjustment Committee or Adjustment Officer.

KCPP 15.6 Section II(F)(5); *see also* KCPP 15.6 Section II(F)(6) (prohibiting the warden from increasing the discipline).

There is no right to appeal the warden’s decision. □ KCPP 15.6 Section II(F)(7). Consequently, to obtain judicial review of an adjustment hearing, prisoners petition the appropriate circuit court for a declaration of rights. *See Polsgrove v. Kentucky Bureau of Corrections*, 559 S.W.2d 736, 737 (Ky. 1977)(“the declaratory relief sought by [a prisoner against the Department of Corrections] in the Franklin Circuit Court was appropriate”); *see also, Smith v. O’Dea*, 939 S.W.2d 353, 355 (Ky.App. 1997)(“A petition for declaratory judgment . . . has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates

may seek review of their disputes with the Corrections Department”).

To summarize, the Legislature authorized the Secretary of the Justice and Public Safety Cabinet, in overseeing the Department of Corrections to regulate, to reward, and to punish prisoner conduct. The Secretary, without ceding or relinquishing that authority, properly delegated much of it to the wardens who, under properly adopted policies, have final say in the forfeiture of good-time credit. The roles of the prison employee who reports the incident, the supervisor who reviews the report, the supervisor who investigates the report, and the adjustment officer who completes the report, are merely preliminary to the wardens’ exercise of final authority delegated to him by the Secretary.

Watkins, 278 S.W.3d at 641-42. Since final authority to govern and punish prisoner conduct, including to revoke and restore good-time credit, was delegated to the warden, the *Watkins* court reasoned that only the warden had the authority to provide the prisoner with relief from the disciplinary proceedings. *Id.* at 642.

Likewise, here, the only party before this court is the adjustment officer, Lieutenant Buckler. Lieutenant Buckler does not have the authority to reduce or overturn the restitution costs imposed upon Clifton, without the authority of the warden. Thus, the warden is a necessary and indispensable party to this appeal, and Clifton’s failure to name him in the notice of appeal is a jurisdictional defect.⁴ Although the issue of jurisdiction was not raised below, an appellate court may not gain jurisdiction through waiver or by consent of the parties. *Wilson v. Russell*,

⁴ While *pro se* appellants are held to less stringent standards, they are required to follow the Kentucky Rules of Civil Procedure. *Watkins*, 278 S.W.3d at 643 (citation omitted).

162 S.W.3d 911, 913 (Ky. 2005). As a result, this court is without jurisdiction to grant Clifton the relief requested.

Appeal No. 2011-CA-001978 is hereby dismissed.

ALL CONCUR.

ENTERED: August 10, 2012

/s/ Laurance B. VanMeter
JUDGE, COURT OF APPEALS