

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-000182-MR

RAMONE NEAL

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 11-CI-00721

KENTUCKY JUSTICE & PUBLIC  
SAFETY CABINET

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: Ramone Neal, *pro se*, appeals from the dismissal of his petition for declaration of rights in a prison disciplinary matter arguing his due process rights were violated.

Neal is an inmate at the Kentucky State Reformatory (KSR) at LaGrange. On February 25, 2011, Lieutenant Timothy Gordon and Corrections

Officer John Berger became suspicious after observing Neal with his right hand in the front of his pants. They escorted him to the dorm office to conduct a search for contraband.

According to the investigative report, Neal refused orders to remove his hand from his pants, to tell officers what he had in his pants and to cooperate with being cuffed. Berger stated during the attempted search he observed Neal place a cell phone under a metal table using magnets taped to its backside. The phone was confiscated and Neal was placed in segregation.

After an investigation, Neal was charged with “possession or promoting of dangerous contraband,” a category VI major violation under Kentucky Corrections Policies and Procedures 15.2. Neal was provided with a copy of the investigation report, pled not guilty, elected to receive a hearing before the adjustment committee and to call witnesses.

Neal’s defense was the phone did not belong to him, was not found on him, any number of inmates could have placed it under the table and Berger had not seen the phone in his possession. Neal called Berger as a witness.

Neal attempted to call Senior Captain Whitfield and Internal Affairs Officer Faye West. Neal stated Whitfield would testify to a phone conversation they had during the incident and establish Neal was not resisting the search, and Whitfield would testify regarding a previous conversation he had with Gordon and Berger. Neal wanted West to examine the phone for fingerprints and numbers called, and testify to that information.

The disciplinary hearing was held on April 7, 2011. The hearing officer determined Whitfield's and West's testimony would be irrelevant and denied Neal the opportunity to call them as witnesses. The hearing officer considered Berger's testimony and statements by Lieutenant Greg Stevens and Neal. Berger testified the office was not checked for contraband before Neal entered, inmates are not searched prior to entering the office and twelve inmates use the office. Berger testified he saw Neal standing by the table where the cell phone was found and remove his hand from his pants. The cell phone was found under the table with a magnet attached to it. Lieutenant Greg Stevens viewed a security tape of the incident and stated: "It appeared that Inmate Neal placed something under the table." Neal denied the cell phone was his.

Neal was found guilty and penalized with 90 days of segregation and the loss of 180 days good time credit. The report explained the basis for the decision of the adjustment officer. Neal appealed the findings of the adjustment officer to the KSR warden, who denied the appeal. On August 9, 2011, Neal filed a petition for declaration of rights in circuit court. On November 10, 2011, the circuit court granted a motion to dismiss determining there was sufficient evidence to support the findings of the adjustment officer under the "some evidence" standard. Neal appealed.

As an inmate undergoing a disciplinary hearing, the procedural process Neal was entitled to receive is limited, as is our role in reviewing whether the evidence was sufficient for a finding of guilt. While due process applies to

prison disciplinary hearings that could result in the loss of good time credit, inmates are not entitled to the same protections as during a criminal prosecution because a balance must be reached between the prison's need for security and the inmate's constitutional rights. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974). Under these circumstances, inmates are entitled to:

- (1) advance[d] 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, Mass. Correctional Inst., Walpole v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985) (citing *Wolff*, 418 U.S. at 563–567, 94 S. Ct. 2963). *See Smith v. O'Dea*, 939 S.W.2d 353, 357 (Ky.App. 1997) (applying these requirements in Kentucky).

The United States Supreme Court and the Kentucky Supreme Court have determined “the implementation of procedural safeguards for the punishment of rule infractions must be tempered by the serious concern for prison security and the safety of both inmates and staff.” *Webb v. Sharp*, 223 S.W.3d 113, 118 (Ky. 2007). Minimum due process requirements are met if “the findings of the disciplinary board are supported by some evidence in the record.” *Hill*, 472 U.S. at 454, 105 S. Ct. at 2773.

In applying the “some evidence” standard, the Court in *Hill* noted that the analysis “does not require examination

of the entire record, independent assessment of the credibility of witnesses, or weighing of evidence.” 472 U.S. at 455, 105 S. Ct. 2768. Nor does the “some evidence” standard require that the evidence logically preclude any conclusion but the one reached by the disciplinary board. *Id.* at 457, 105 S. Ct. 2768. Rather, the “relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.* at 455–56, 105 S. Ct. 2768.

*Webb*, 223 S.W.3d at 118.

Neal claims he was denied due process when he was not allowed to call Whitfield and West as witnesses and the adjustment officer failed to explain why their testimony would be irrelevant. There is no absolute right to call witnesses in a disciplinary proceeding. The right to call witnesses is limited based on the legitimate needs of the prison. “Prison officials must have the necessary discretion to keep the hearing within reasonable limits[.]” *Wolff*, 418 U.S. at 566, 94 S. Ct. at 2980. Prison officials may reasonably exclude witnesses whose testimony would be irrelevant. *Id.* When inmates are not allowed to call witnesses, prison officials are required to give a limited explanation of the reason for the refusal, either at the hearing or later. *Ponte v. Real*, 471 U.S. 491, 497, 105 S. Ct. 2192, 2196, 85 L. Ed. 2d 553 (1985).

The hearing officer properly exercised his discretion in excluding the testimony of Whitfield and West as irrelevant and his statement they were irrelevant was a sufficient explanation of his decision. Whitfield’s testimony would not aid the hearing officer in determining whether Neal had the cell phone in his possession. Because West never searched the phone or tested it for

fingerprints, her testimony would be irrelevant as to the identity of the phone's owner.

We also determine the evidence produced at the hearing was sufficient to find Neal guilty under the "some evidence" standard. The modicum of evidence necessary to support the adjustment committee's decision will not be second-guessed by a reviewing court. *Hill*, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774. We must uphold the disciplinary board's ruling if there is any evidence in the record to support it. *Id.* at 455-456, 105 S. Ct. at 2774. Prison disciplinary actions conform to this standard even when the evidence is relatively meager if the evidence supports an inference of guilt. *See id.* at 457, 105 S. Ct. at 2775.

Neal argues Berger's statement in the investigative report that Neal removed a cell phone from his pants was mere conjecture. Neal argues there was no evidence he possessed the cell phone because Berger did not see him place the cell phone under the table.

We disagree Neal's guilt was determined based on bare conjecture and a false assumption. Although Berger did not see Neal holding the cell phone, Berger's testimony provided evidence to support the inference Neal had the phone in his possession before hiding it under the table. Stevens' statement that the tape showed Neal putting something under the table also connected Neal to the phone discovered. This was sufficient to meet the some evidence standard.

Accordingly, we affirm the Oldham Circuit Court's dismissal of Neal's petition for declaration of rights.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ramone Neal, *Pro se*  
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BRIEF FOR APPELLEE:

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