

RENDERED: AUGUST 30, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-001126-MR

JAMES MOORMAN

APPELLANT

v.

APPEAL FROM MARION CIRCUIT COURT  
HONORABLE DAN KELLY, JUDGE  
ACTION NO. 12-CI-00062

DANIEL AKERS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MOORE, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: James Moorman brings this *pro se* appeal from a June 12, 2012, order of the Marion Circuit Court dismissing his Petition for Declaration of Rights seeking restoration of good-time credit. We affirm.

Moorman was an inmate at Marion Adjustment Center in October of 2011, when a Prison Rape Elimination Act (PREA) investigation was commenced.

Officer Lola Cox conducted the PREA investigation which ultimately implicated Moorman. On October 18, 2011, it was alleged that inmate Cory Duncan “performed oral sex on inmate Moorman in the Legal Library. In exchange for the oral sex, inmate Moorman paid a portion of a debt” Duncan owed to another inmate. As part of the investigation, taped surveillance footage was discovered that showed Moorman and Duncan entering and subsequently exiting the legal library during the time in question. Following the investigation, Moorman was charged with violating Corrections Policy and Procedures (CPP) V1-18 prohibiting prostitution.

On December 7, 2011, a prison disciplinary hearing was conducted by Chairman/Adjustment Officer Corey Broyles. Present at the hearing were Moorman, Moorman’s legal aide, Unit Manager Christopher Rakes, and Officer Cox. In addition to the testimony of those present at the hearing, Broyles considered the PREA report and the written statement of inmate Ricky Lee. In his written statement, Lee stated that Moorman and Duncan were in the legal library at the relevant time. Thereafter, Moorman was found guilty as charged and a penalty of 180 days of good-time credit was forfeited and 90 days of segregation was imposed.

Moorman appealed the decision of the disciplinary proceeding to Warden Daniel Akers; Akers denied the appeal. On March 2, 2012, Moorman

filed a Petition for Declaration of Rights in the Marion Circuit Court. By order entered June 12, 2012, the circuit court affirmed the findings of the hearing officer and dismissed Moorman's petition. This appeal follows.

Moorman argues that the circuit court erred by dismissing his Petition for Declaration of Rights. Specifically, Moorman argues that his constitutional procedural due process rights were violated when he was denied access to the taped surveillance footage, was denied the right to call Duncan as a witness, and was denied the ability to verify the reliability of certain confidential informants.

It is well-established that in a prison disciplinary proceeding an inmate is not entitled to the "full panoply of rights due a defendant" in a criminal proceeding. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Instead, there must be a balancing of the "divergent interest between the institution's need for security and the inmates' constitutional rights." *Webb v. Sharp*, 223 S.W.3d 113 (Ky. 2007) (citing *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985)). Thus, in prison disciplinary proceedings where a loss of good-time credit is involved, due process is satisfied if the inmate is provided 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 [sic] of the evidence relied on and the reasons for the disciplinary action.

*Webb*, 223 S.W.3d at 117-18 (quoting *Hill*, 472 U.S. at 454.)<sup>1</sup> And, upon appellate consideration, we review the factual findings of the disciplinary action for “some evidence” to support the result. *Id.* at 118. If some evidence exists in the record, the disciplinary action will not be disturbed on appeal. *Id.*

In this case, some evidence exists in the record to support the finding that Moorman was guilty of prostitution. There was evidence that Moorman and Duncan were present in the legal library at the time the alleged sexual incident occurred. And, the confidential PREA report also contained evidence implicating Moorman. Taking together with the videotaped surveillance footage viewed by the hearing officer and Officer Cox, there existed some evidence to support finding Moorman guilty of prostitution.

Also, Moorman was not denied procedural due process at the hearing. Moorman cannot be given access to the videotaped surveillance because the video was accidentally destroyed. However, the hearing officer and Officer Cox had previously reviewed the videotaped surveillance footage. Also, the hearing officer acted prudently by disallowing Moorman to call Duncan as a witness due to concerns over institutional safety and Duncan’s safety. CPP 15.6 § II; *Hill*, 472

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<sup>1</sup> The requirements necessary to satisfy constitutional due process as set forth in *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985) have also been recognized in Kentucky by this Court in *Smith v. O’Dea*, 939 S.W.2d 353 (Ky. App. 1997).

U.S. 445. And, as to the confidential informants, there was testimony that these informants gave reliable information in the past.

Accordingly, we conclude that the circuit court properly dismissed Moorman's petition for declaration of rights.

For the foregoing reasons, the order of the Marion Circuit Court is affirmed.

ALL CONCUR.

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