

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-001140-MR

GLENN D. ODOM

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NO. 12-CI-00068

PHILLIP PARKER

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: MAZE, STUMBO, AND VANMETER, JUDGES.

MAZE, JUDGE: Glenn D. Odom appeals from an order of the Lyon Circuit Court dismissing his petition for declaratory judgment in a prison disciplinary action.

Finding no error, we affirm.

Odom is currently incarcerated at the Kentucky State Penitentiary in Eddyville, Kentucky, serving a life sentence for violent felony offenses. In March

of 2012, he was assigned to the special management unit for suicide observation. Between March 5 and March 10, Odom committed a series of institutional infractions. These infractions resulted in seven separate disciplinary write-ups, consisting of two counts for violation of Category III, Item 12 “Inflicting Injury to Self”; two counts of Category IV, Item 12 “Inappropriate Sexual Behavior”; two counts of Category VI, Item 11 “Creating or Causing Health Hazard”; and one count of Category IV, Item 10 “Negligent/Deliberate Destruction of Property less than \$100.”

Each infraction was given a separate hearing before the Adjustment Committee. Odom pleaded guilty to the two counts of Inflicting Injury to Self, based upon two separate suicide attempts. He also admitted to the conduct supporting one of the charges of Creating or Causing a Health Hazard and to the charge of Deliberate Destruction of Property. The Committee considered the appropriate punishment on these counts and also heard evidence on the remaining counts. At the close of the proceedings, the Committee entered written findings of guilt on all charges. The Committee imposed sentences of disciplinary segregation on Odom totaling 345 days. Finally, the Committee directed Odom to pay restitution of \$213.52 for the property damage. The Committee did not assess any loss of good-time credit.

Odom filed appeals with the Warden, Phillip Parker, who affirmed each of the convictions. Thereafter, Odom filed a Petition for Declaration of Rights in the Lyon Circuit Court, challenging the Committee’s findings of guilt

and the imposed segregation and restitution sentences. Odom also sought compensation for the period of time spent in segregation. After considering Odom's petition, the Warden's response and the administrative record, the circuit court dismissed the petition. The court found that there was "some evidence" supporting the Committee's findings of guilt on each of the charges and that Odom received all the due process to which he was entitled. In addition, the court found that the total sentences of disciplinary deprivation did not rise to the level of an "atypical and significant hardship" necessary to constitute a due process violation. Odom now appeals to this Court.

Prison disciplinary proceedings, such as the Adjustment Committee hearing in the case before us, are not criminal prosecutions. *Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S. Ct. 2963, 2963, 41 L. Ed. 2d 935 (1974). Rather, these proceedings are considered administrative proceedings. Consequently, prisoners subject to disciplinary proceedings do not enjoy the full panoply of due process protections. *Id.* Prisoners do, however, retain a minimal right to due process subject to the many limitations inherent in the penal system. *Id.* In order to comply with the minimum requirements of procedural due process, an inmate cannot be deprived of a protected liberty interest unless he receives: "(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 fact-finder of the evidence relied on and the reasons for the disciplinary action."

*Superintendent, Massachusetts Correctional Institution, 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 563–67, 94 S. Ct. at 2963. Additionally, due process requires that there be “some evidence” in the record to support the disciplinary board's decision. *Id.* This standard merely requires some basis in the record in which the reviewing court can deduce the reasons for the disciplinary board's finding. *Id.* at 457, 105 S. Ct. 2768. *See also Smith v. O’Dea*, 939 S.W.2d 353 (Ky. App. 1997).

As the circuit court recognized, there was some evidence supporting the Committee’s findings of guilt to all of the charges. Correctional officers served as witnesses to all seven of the infractions. Odom received notice of the charges well in advance of the hearings. He did not cooperate with the investigations, nor did he request the presence of witnesses. Odom did ask the Committee to review the security tape for one of the charges, Creating a Health Hazard, and both of the counts of Inappropriate Sexual Behavior. The Committee declined, citing the security risk and lack of advance notice. Under the circumstances, we cannot say that this denial violated Odom’s right to present evidence in his defense.

Odom primarily challenges the total amount of disciplinary segregation which the Committee imposed upon him. Imposition of disciplinary segregation typically does not implicate a protected liberty interest protected by the Due Process Clause. *Marksberry v. Chandler*, 126 S.W.3d 747, 749-50 (Ky. App. 2003), citing *Sandlin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). In such cases, the focus of the due process inquiry is whether the

punishment at issue “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 750, citing *Sandlin* at 484, 115 S. Ct. at 2300. While a determination of whether a specific situation constitutes “atypical and significant hardship” usually involves factual issues, the ultimate issue of atypicality is a legal issue subject to *de novo* review. *Id.*

In this case, Odom does not show that the amount of disciplinary segregation imposes an atypical and significant hardship upon him in relation to the ordinary incidents of prison life. While the total amount of segregation imposed is significant, Odom makes no showing that the individual sentences were atypical considering each infraction. It seems clear that Odom requires mental health treatment, but he does not claim that such services are unavailable to him while in segregation. Furthermore, segregation is appropriate considering the disruptive nature of Odom’s behavior. Therefore, we agree with the circuit court that Odom has failed to show any due process violation arising from the disciplinary segregation sentences imposed on him.

Finally, Odom claims a right to compensation for his loss of income from prison work and for mental stress caused by his extended period in disciplinary segregation. However, Kentucky Revised Statute 454.405(5) provides that no inmate may maintain a civil action for monetary damages for mental or emotional injury without a prior showing of physical injury. Even if Odom’s petition for relief were otherwise justified, he has failed to make any showing necessary for an award of monetary damages.

Accordingly, the order of the Lyon Circuit Court dismissing Odom's petition for declaration of rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Glenn D. Odom, *pro se*  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

John Marcus Jones  
Kentucky Department of Corrections  
Frankfort, Kentucky