

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-001342-MR

CHASITY COMBS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL III, JUDGE  
ACTION NO. 12-CI-00007

BRANNON GAINES, STEVEN LADD,  
AND TIMOTHY LANE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MOORE, AND NICKELL, JUDGES.

MOORE, JUDGE: Chasity Combs appeals, *pro se*, the order of the Lyon Circuit Court granting the appellees' motion to dismiss Combs' Petition for Declaration of Rights from the Kentucky Department of Corrections disciplinary action convicting Combs of a violation of Kentucky Corrections Policies and Procedures (CPP) Rule 15.2(II)(C)(Category VI)(12) which prohibits inappropriate sexual

activity with another person. After a careful review of the record, we affirm because there was some evidence supporting the appellees' decision.

The subject disciplinary action against Combs arose after Corrections Officer Tammy Elkins reported that she:

[N]oticed that 2 inmate kitchen workers were not accounted for. After a brief search of the Kitchen I checked the bathroom in the kitchen and saw inmate Chasity Combs #218594 and [another female] inmate . . . exit the bathroom together. After further investigation it was discovered by Lt James Harris that inmate Combs and [the other] inmate . . . entered the bathroom together at 7:23 AM and did not exit the bathroom until 7:39 AM after C/O Elkins knocked on the door.[<sup>1</sup>]

Sergeant Samuel E. Thorp also reported that he investigated the incident and that Combs reported that she had become sick and went into the bathroom to vomit. The other inmate involved explained to him that she was in the bathroom washing her hands with the door open and that inmate Combs came into the bathroom because she was sick and vomiting. The other inmate further explained that she "closed the door because [Combs] was embarrassed because she thought she was going to have a seizure." The other inmate reported that she did not alert anyone that medical attention was needed because Combs told her that she could "talk herself out" of having a seizure by "calming herself down." Aramark Supervisor Stan Werderman stated that he kicked the bottom of the bathroom door and told the inmates to come out, but the door was "solid" and did not budge when he kicked it.

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<sup>1</sup> The Adjustment Board found that the inmates had entered the bathroom at different times.

Sergeant Thorp also spoke with the prison nurse who stated that it was possible Combs could have been sick that day and the nurse did hear noises coming from the bathroom in medical, which could have been due to Combs vomiting. The nurse did not see Combs vomit due to the door being closed. Corrections Officer Fraliex also indicated that she heard noise coming from medical, but did not actually see whether Combs was in fact sick. Combs' records reflect that she has both seizure disorder and self-reported bisexual tendencies.

Based upon these reports, Combs was convicted of violating CPP Rule 15.2(II)(C)(Category VI)(12) which prohibits inappropriate sexual behavior with another person. As a result of this decision, Combs received forty-five (45) days of disciplinary segregation and forfeiture of ninety days (90) good time credit.

Combs appealed the determination of the Adjustment Committee. The warden affirmed, noting that the “[i]nmate handbook indicates that inmates are prohibited from being in a bathroom or shower stall together and anyone violating this would be subject to an [i]nappropriate sexual behavior with another inmate rule violation since there is no other reason for two inmates to be in this area together.” Thereafter, the circuit court granted the appellees motion to dismiss Combs' Petition for Declaration of Rights, concluding that the testimony of Corrections Officer Tammy Elkins and Aramark Supervisor Stan Werderman constituted some evidence supporting the decision of the Adjustment Board. Combs now appeals.

On appeal Combs contends the circuit court erred when it concluded that there was some evidence of record to support the Adjustment Committee's decision.<sup>2</sup>

[T]he [United States Supreme] Court concluded that minimum due process requirements are met if the findings of the disciplinary board are supported by some evidence of record. . . . [T]his standard was applied in Kentucky in *Smith v. O'Dea*[, 939 S.W.2d 353, 356 (Ky. App. 1997)].

In applying the "some evidence" standard, the Court in [*Superintendent, Mass. Correctional Inst., Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.E.2d 356 (1985)] noted that the analysis does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of evidence. Nor does the some evidence standard require that the evidence logically preclude any conclusion but the one reached by the disciplinary board. Rather, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

*Webb v. Sharp*, 223 S.W.3d 113, 118 (Ky. 2007) (internal citations and quotation marks omitted). Our review is therefore limited to whether there was some evidence to support the Adjustment Committee's finding of inappropriate sexual behavior.

"Inappropriate sexual behavior" is defined by CPP Rule 15.2 as "seductive or obscene acts that include intimate touching, penetration of another's body cavity, and includes homosexual and heterosexual activity." According to Corrections Officer [C/O] Tammy Elkins's write-up of the incident, C/O Elkins

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<sup>2</sup> Combs, however, does not contest that she was alone in the restroom with another inmate.

“noticed that 2 inmate kitchen workers were not accounted for. After a brief search of the Kitchen [C/O Elkins] checked the bathroom in the kitchen and saw [the other inmate] and inmate Chasity Combs . . . exit the bathroom together.”

In his review on appeal, the warden noted that the “Inmate handbook indicates that inmates are prohibited from being in a bathroom or shower stall together and anyone violating this would be subject to an Inappropriate sexual behavior with another inmate rule violation since there is no other reason for two inmates to be in this area together.”<sup>3</sup> The warden continued, noting that Combs was “found in the compound kitchen restroom with another inmate. The door was closed and the two [inmates] remained in the restroom together for several minutes.” Therefore, based upon our review of the record, including C/O Elkins’s write-up of what she observed about the incident and the warden’s written finding concerning the rules from the inmate handbook, we find that there was some evidence to support the appellees’ decision.

Furthermore, Combs’s allegation that the requirements of *Webb* were not met is meritless. In *Webb*, the Kentucky Supreme Court noted:

In balancing the divergent interests between the institution’s need for security and the inmates’ constitutional rights, the U.S. Supreme Court has concluded that due process requirements in prison disciplinary hearings, where the loss of good time credit is at stake, include:

- (1) advance written notice of the disciplinary charges;
- (2) an opportunity, when consistent

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<sup>3</sup> Combs does not deny that the Inmate Handbook contains these provisions, nor does she deny being aware of these provisions before the incident in question.

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 (internal quotation marks and citation omitted).

Combs alleges that the Adjustment Committee violated this three-prong test by “not using any actual proof in the fact finder’s report.” On the contrary, the Adjustment Committee stated that it was relying upon the reports of C/O Elkins and Lieutenant James Harris (a supervisor), and that the Committee found C/O Elkins and Lt. Harris credible. We further note that Combs acknowledges in her appellate brief that she knew the charge, and according to the Adjustment Committee’s report, Combs “decided to waive witnesses requested and chose to accept their statements as written.” Combs does not challenge this statement by the Adjustment Committee. Therefore, her claim that the three-prong test set forth in *Webb* was violated lacks merit.

Accordingly, the order of the Lyon Circuit Court is affirmed.

ALL CONCUR.

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