

RENDERED: NOVEMBER 26, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001276-MR

DANTE GREGORY

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 13-CI-00105

ALLISON S. MEDLEY, REPORTING
EMPLOYEE, BLACKBURN
CORRECTIONAL COMPLEX;
RICKY L. CARY, ADJUSTMENT
OFFICER, GREEN RIVER CORRECTIONAL
COMPLEX; AND ALAN D. BROWN,
WARDEN, GREEN RIVER
CORRECTIONAL COMPLEX

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, KRAMER¹ AND MAZE, JUDGES.

¹ Judge Joy A. Kramer, formerly Judge Joy A. Moore.

MAZE, JUDGE: Dante Gregory, *pro se*, appeals from the dismissal of his petition for a declaration of rights by the Muhlenberg Circuit Court. Upon review, we affirm.

In November of 2012, Gregory was a prisoner at the Green River Correctional Complex in Central City. On November 15, an investigation into an assault on Inmate Samuel Jones was undertaken by Internal Affairs Captain Eric Sizemore, Deputy Warden Brandy Harm, and Deputy Warden Dale Martin. On November 19, a disciplinary report was issued detailing the results of that investigation. The investigators stated that they conducted interviews with 40 inmates in the housing area where the assault occurred. Multiple inmates identified Gregory as being involved in the assault.

Gregory pleaded not guilty to the charge of physical action resulting in death or injury of an inmate. On December 28, 2012, the Adjustment Committee conducted a hearing on the charge. Gregory was present with his inmate legal aide but did not request any witnesses. Based upon the disciplinary investigation report, the Committee found Gregory guilty and imposed penalties of 180 days in disciplinary segregation, a loss of one day of non-restorable good-time credit, and payment of his share of medical expenses incurred as a result of the incident.

Gregory appealed the Committee's decision to the warden. The warden amended the charge to physical action against an inmate, and amended the

sanctions to a 45-day assignment to disciplinary segregation and payment of the injured inmate's medical expenses. However, the warden concluded that the evidence presented in the report was sufficient to support the charge.

Thereafter, Gregory filed a Petition for Declaration of Rights in the Muhlenberg Circuit Court challenging the Committee's findings. In response, the Department filed a motion to dismiss, arguing that Gregory received adequate notice and sufficient due process in the Committee proceedings, and that the Committee's determination was supported by some evidence of substance. The circuit court agreed, and entered an order on January 19, 2013, dismissing Gregory's petition. Gregory now appeals to this Court.

Prison disciplinary hearings at which an inmate's good time credit may be affected must comply with procedural due process. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2974-75, 41 L. Ed. 2d 935 (1974). At a minimum, a prisoner must receive notice of the charges, an opportunity to present evidence in his defense, and a report containing the committee's reasoning and conclusions. However, "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Id.* at 556. As such, upon review of a prison disciplinary action, we will find that the requirements of due process have been satisfied so long as "*some evidence* supports the decision by the prison disciplinary board...." *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*,

472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356 (1985) (emphasis added), *as adopted by Smith v. O'Dea*, 939 S.W.2d 353, 358 (Ky. App. 1997).

Gregory first complains that the disciplinary report does not meet the requirements of Corrections Policies & Procedures (CPP) 15.6 because it inaccurately reports the date of the incident as November 19 rather than November 15. But while the Disciplinary Report Forms incorrectly list the date of incident in the caption, the findings correctly recite the date of the incident. We conclude that any error is harmless as it did not affect Gregory's due process rights.

Gregory primarily argues that the Committee erred in relying on confidential informants without some evidence supporting the reliability of their statements. The circuit court noted that Gregory failed to raise this issue in his appeal to the warden, and consequently has waived review of the matter. While Gregory contends that he did raise this issue, his appeal to the warden does not present this specific objection.

Even if this issue is preserved, we find no due process violation. In cases in which prisoner misconduct is found upon evidence consisting entirely, or even substantially, of the statement of an investigating officer that he has been told by confidential informants that the misconduct occurred, the committee must make a determination that a confidential informant is trustworthy and give some reference to the verification procedure used. *Foley v. Haney*, 345 S.W.3d 861, 864-65 (Ky. App. 2011), citing *Gilhaus v. Wilson*, 734 S.W.2d 808, 810 (Ky. App. 1987), and *Hensley v. Wilson*, 850 F.2d 269, 276 (6th Cir. 1988). Furthermore, in

Haney v. Thomas, 406 S.W.3d 823 (Ky. 2013), the Kentucky Supreme Court emphasized that the Adjustment Committee cannot simply accept the investigating officer's findings as true. Rather, the Committee's findings must identify the corroborating factors. *Id.* at 827-28.

In this case, the Committee pointed out that Gregory's involvement was witnessed by "no fewer than ten inmates." Although the Committee did not expressly find that the number of independent identifications made the witnesses more credible, that conclusion is necessarily implied within the Committee's findings. We conclude that this was sufficient to establish some reliability to the anonymous statements referenced in the investigative report. Finally, we conclude that the investigative report was sufficient to provide "some evidence" to support the Committee's decision. Therefore, the circuit court properly dismissed the petition.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Dante Gregory, *pro se*
Green River Correctional Complex
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BRIEF FOR APPELLEES:

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