

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000002-MR

CRAIG TAYLOR

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 13-CI-00376

GREGORY S. HOWARD, WARDEN; and
LINDSAY L. DOWDEN, HEARING OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, KRAMER¹ AND STUMBO, JUDGES.

STUMBO, JUDGE: Craig Taylor appeals from an Order of the Oldham Circuit Court dismissing his Petition for Declaration of Rights. Taylor appealed below from a prison disciplinary proceeding in which he had been found guilty of the inchoate offense of "Physical Action Resulting in the Death or Serious Injury of

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

Another Inmate." He contends that the Oldham Circuit Court erred in sustaining the motion of Warden Gregory S. Howard and Lindsay L. Dowden to dismiss the Petition for failure to state a claim upon which relief can be granted. We find no error and AFFIRM the Order on appeal.

Taylor is an inmate with the Kentucky Department of Corrections. On January 24, 2013, he was involved in a fight with inmate William McKee at the Luther Lockett Correctional Complex ("LLCC"). Taylor and McKee were taken to the LLCC medical department, where they were treated and released. McKee received bruises, scratches and contusions during the fight.

Thereafter, a prison disciplinary report was filed charging Taylor with a violation of the Corrections Policy and Procedure ("CPP") inchoate offense of "Physical Action Resulting in the Death or Serious Injury of Another Inmate." Hearing adjustment officer Dowden found Taylor guilty of the offense. He was placed in disciplinary segregation and received a forfeiture of "good time" days.

Taylor appealed to Warden Gregory S. Howard, in which he argued that he was improperly found guilty of the offense because McKee did not suffer "death or serious physical injury" as required by the CPP. Warden Howard affirmed the finding of guilty, after which Taylor prosecuted a Petition for Declaration of Rights in Oldham Circuit Court. Taylor's Petition alleged that there was no evidence to support the finding of guilty.

Warden Howard and Officer Dowden then filed a Motion to Dismiss Taylor's petition for failure to state a claim upon which relief may be granted

(Kentucky Rules of Civil Procedure 12.02(f)). The Oldham Circuit Court found that McKee's assessment and neurological examination by a licensed practical nurse constituted "some evidence" in support of the finding of guilty. By way of an Order rendered on October 7, 2013, the Oldham Circuit Court sustained the Motion to Dismiss. This appeal followed.

Taylor, *pro se*, now argues that the Oldham Circuit Court erred in sustaining Warden Howard and Officer Dowden's Motion to Dismiss. The focus of his claim of error is that the circuit court erred in finding that "some evidence" exists to support the hearing officer's finding of guilty. Specifically, Taylor maintains that no evidence was adduced that inmate McKee suffered death or serious injury as set out in the CPP. After directing our attention to CPP 15.2(I) and Kentucky Revised Statutes 500.080(15), Taylor contends that McKee's bruises, scratches and contusions do not constitute the requisite disfigurement or prolonged impairment of health required for a finding of guilt on the charged offense. Taylor argues that what *could* have happened to inmate McKee is irrelevant and that Officer Dowden and Warden Howard were constrained to consider what *did* happen to McKee. Taylor contends that the Oldham Circuit Court erred in failing to so conclude and that he is entitled to an Order reversing his disciplinary conviction and restoring his good time credit.

Taylor was charged with an "inchoate" offense. An inchoate offense is defined as "a step toward the commission of another crime, the step itself being serious enough to merit punishment." Black's Law Dictionary 1108 (7th Ed. 1999).

See also Smith v. Commonwealth, 2004 WL 102495, 3 (Ky. 2004). The CPP incorporates inchoate offenses, providing that a "person may be found to have committed the violation listed in this policy if he: a. Attempts to commit the violation[.]" CPP 15.2(II)(E)(1). Thus, attempting to commit an offense is sufficient to support a finding of guilt under the CPP.

In the matter at bar, Taylor acknowledges that he was the instigator of the fight, which was recorded by a security camera and shows Taylor striking McKee and "stomping" his head when he was on the ground. The video shows Taylor being subdued, then breaking free and continuing to strike McKee. This evidence is sufficient to establish the "attempt" element of CPP 15.2(II)(E)(1), as well as the underlying inchoate offense of "Physical Action Resulting in the Death or Serious Injury of Another Inmate."

The standard of judicial review of a prison disciplinary officer's findings of fact is whether "some evidence" exists in support of the result. *Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997). The "some evidence" standard does not require that an adjustment committee's fact-finding be supported by compelling evidence; rather, it merely requires evidence that will support a reasonable inference of guilt. *Id.* at 357. Determining whether the "some evidence" standard has been satisfied does not necessitate an examination of the entire record or weighing the credibility of the evidence. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). The circuit court need only review the record for "some

evidence” sufficient to uphold a decision of the hearing officer. *Yates v. Fletcher*, 120 S.W.3d 728 (Ky. App. 2003).

The record supports the circuit court's determination that “some evidence” was presented in support of the charge, and upon which the hearing officer reasonably relied in reaching its conclusion. Because "some evidence" is found in the record in support of the charge, the Oldham Circuit Court properly dismissed Taylor's claim that no evidence supported the charge. We find no error.

For the foregoing reasons, we AFFIRM the Order of the Oldham Circuit Court sustaining the motion of Howard and Dowden to dismiss the Petition.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Craig Taylor, *pro se*
Little Sandy Correctional Complex
Sandy Hook, Kentucky

BRIEF FOR APPELLEES:

J. Todd Henning
Department of Corrections
Frankfort, Kentucky