

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000194-MR

JOSEPH CONNER

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 13-CI-00306

DON BOTTOM; JASON PERKINS; AND  
LIEUTENANT RICHARD WALLS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Joseph Conner appeals from the Boyle Circuit Court's October 4, 2013, order denying his petition for a declaration of rights. For the following reasons, we affirm.

Conner is an inmate at Northpoint Training Center and brought this action to contest the findings of a disciplinary hearing. On November 15, 2012, another

inmate, Samuel Jones, was assaulted and suffered serious injuries. During the investigation into the incident, several inmates, including a confidential informant, reported to investigators that multiple inmates were involved in the assault, including Conner. A write-up was issued to all of the inmates involved, and Conner was eventually charged with physical action resulting in death or injury of an inmate. Conner testified during his adjustment proceedings that he had nothing to do with the assault on Jones and presented a confession by another inmate stating that he had acted alone in the assault of Jones and Conner was not involved. Conner was ultimately found guilty of the assault, was given fifteen days of disciplinary segregation to be suspended for ninety days, and was ordered to pay restitution for his share of any medical expenses incurred as a result of the incident.

Conner appealed the decision of the adjustment committee, and the warden denied his appeal. Subsequently, Conner filed a petition for a declaration of rights with the Boyle Circuit Court, naming the warden, Don Bottom, and multiple other Department of Corrections officials as defendants. Conner argued that the evidence relied upon by the adjustment officer at his hearing was insufficient for a finding of guilty. He claimed that the investigating officer, Lt. Richard Walls, did not conduct a good faith investigation, no determination was made regarding reliability of witnesses, and he was denied the right to question the validity of the restitution. As such, Conner claimed he was denied constitutional due process. In response, the Corrections Department filed a motion to dismiss. The trial court denied the petition, finding that the prison disciplinary committee acted

appropriately. Conner filed a motion for reconsideration, which the trial court denied. This appeal follows.

On appeal, Conner makes four arguments. First, he contends that insufficient evidence supports his conviction of “physical action against another inmate causing physical injury.” Second, he claims that the adoption of the “some evidence” standard in *Smith v. O’Dea*, 939 S.W.2d 353 (Ky. App. 1997), was unconstitutional. Next, Conner argues that he was denied his due process rights when he was denied the opportunity to question the amount of restitution he was ordered to pay. Lastly, Conner maintains that his due process rights were violated when the adjustment officer made no determination as to the credibility and reliability of the confidential informant used.

“A petition for declaratory judgment pursuant to KRS<sup>[1]</sup> 418.040 has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates may seek review of their disputes with the Corrections Department.” *O’Dea*, 939 S.W.2d at 355. Although the Department of Corrections filed a motion to dismiss in response to Conner’s petition, rather than a motion for summary judgment, this court has held that summary judgment standards and procedures are most appropriate in these cases. *See id.* at 355 n.1. However, the typical summary judgment standard is insufficient to address the administrative discretion involved in the Department of Corrections’ disciplinary procedures.

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<sup>1</sup> Kentucky Revised Statutes.

This court has described the applicable standard for addressing prison disciplinary actions as follows:

[w]here, as here, principles of administrative law and appellate procedure bear upon the court's decision, the usual summary judgment analysis must be qualified. The problem is to reconcile the requirement under the general summary judgment standard to view as favorably to the non-moving party as is reasonably possible the facts and any inferences drawn therefrom, with a reviewing court's duty to acknowledge an agency's discretionary authority, its expertise, and its superior access to evidence. In these circumstances we believe summary judgment for the Corrections Department is proper if and only if the inmate's petition and any supporting materials, construed in light of the entire agency record (including, if submitted, administrators' affidavits describing the context of their acts or decisions), does not raise specific, genuine issues of material fact sufficient to overcome the presumption of agency propriety, and the Department is entitled to judgment as a matter of law.

*Id.* at 356. “These petitions thus present circumstances in which the need for independent judicial factfinding is greatly reduced. The circuit court's fact-finding capacity is required only if the administrative record does not permit meaningful review.” *Id.* Accordingly, the trial court presumed that the Department of Corrections acted appropriately in denying Conner’s petition, and that order may only be reversed if Conner can raise specific, genuine issues of material fact that overcome that presumption.

First, Conner claims that he should not have been convicted of harming another inmate because insufficient evidence supported the conviction. We disagree. Under the “some evidence” standard adopted in *O’Dea*, if any evidence

in the record supports the conclusion made by the disciplinary board, we must affirm. *Id.* at 358. The Kentucky Supreme Court provides a helpful discussion of the “some evidence” standard in *Ramirez v. Nietzel*, 424 S.W.3d 911, 917-18 (Ky. 2014):

Admittedly, our review of prison disciplinary cases is materially limited. But a review so limited as to be meaningless cannot satisfy the requirements of due process. Generally speaking, in the context of prison discipline, if “the findings of the prison disciplinary board are supported by some evidence in the record[,]” due process is satisfied. And determining whether “some evidence” is present in the record does not “require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence.” Even “meager” evidence will suffice. The primary inquiry is “whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” If “some evidence” is satisfied, the fear of arbitrary government action is removed and no due-process violation is found.

(internal footnotes omitted). Here, at least ten inmates indicated to investigators that Conner was involved in the assault on Jones. We believe this constitutes significant evidence, beyond the requisite “some evidence,” in support of the board’s decision, so we disagree with Conner’s contention.

In a similar vein, we do not believe Conner presents any tenable argument for rejecting the “some evidence” standard adopted in *O’Dea*. The thrust of Conner’s argument is that the “some evidence” standard, adopted from [\*Superintendent, Mass. Corr. Inst., Walpole v. Hill\*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 \(1985\)](#), does not comport with guarantees of due process in

Section 2 of the Kentucky Constitution. “[I]n applying the due process guarantee of our Constitution to administrative adjudications, our courts traditionally have deemed arbitrary any factual determinations not supported by ‘substantial evidence.’” *O’Dea*, 939 S.W.2d at 358. However, this exact argument was addressed in *O’Dea*, and this court decided that the lesser “some evidence” standard was appropriate, rather than the “substantial evidence” standard. *Id.* (“[Section 2 of our Constitution](#) is not compromised by this standard of review nor, in general, is it compromised by judicial deference to the judgments of prison disciplinary committees and administrators[.]”) Such a standard is suitable given the “prison administration’s compelling interest in order and in authority as a means to order” and the “relatively minor interests” addressed by these inmate declaratory petitions. *Id.* In this case, we find no reason to reject the established standard.

Next, Conner claims he was denied due process when he was not permitted to question the amount of restitution he was ordered to pay for Jones’s medical care. Correctional Policy and Procedure (“CPP”) 15.2 II(G)(4) provides that the Department of Corrections may recover any financial loss due to an inmate’s reckless behavior, and specific findings are not required. An adjustment officer may assess restitution even if a specific amount has not been determined at the time of the hearing. *See Vickers v. Seabold*, 2005 WL 735584 (Ky. App. 2005) (court upheld order for inmate to pay restitution for the cost of a failed drug test,

although the specific amount was not stated). Therefore, ordering Conner to pay restitution for the cost of Jones's medical care was proper.

Lastly, Conner alleges that the Department of Corrections' use of a confidential informant was a violation of his due process rights. Conner claims that the adjustment officer failed to include in his report an explanation of why the confidential informant was reliable, and this omission constitutes reversible error. CPP 9.18 II(E)(6)(a) states that reliability of a confidential informant may be determined by a record of past reliability or by other factors that reasonably convince the Adjustment Committee of the confidential informant's reliability. "[T]here must be some evidence in the record to support the Adjustment Committee's finding that the information obtained from the informant is reliable. A simple statement in the Adjustment Committee's findings that 'the Committee believes the informant is credible and the information reliable' is not enough to satisfy the some evidence standard." *Haney v. Thomas*, 406 S.W.3d 823, 827 (Ky. 2013). Still, in this case multiple officers deemed the informant reliable during the investigation phase, and at least nine other inmates corroborated his story. We believe this sufficient to establish reliability of the informant and the information he provided. *See id.* ("reliability may be confirmed by the fact that there are multiple unnamed informants whose stories are consistent and corroborate one another[]").

Ultimately, we do not believe Conner has presented this court with any evidence of a violation of his due process rights sufficient to overcome the

presumption that the Department of Corrections acted properly. Therefore, the order of the Boyle Circuit Court denying Conner's petition for a declaration of rights is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Joseph Conner, *Pro se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

J. Todd Henning  
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