

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000299-MR

MARION ADJUSTMENT CENTER;
DANIEL AKERS, WARDEN;
CABRINA GADBERRY;
CHRISTOPHER RAKES; AND
KENTUCKY DEPARTMENT OF CORRECTIONS
APPELLANTS

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE DAN KELLY, JUDGE
ACTION NO. 13-CI-00176

ADRIAN BROWN
APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KRAMER, AND NICKELL, JUDGES.

CLAYTON, JUDGE: The Marion Adjustment Center, its employees, Daniel Akers, Cabrina Gadbery, and Christopher Rakes, and the Kentucky Department of Corrections appeal from the January 30, 2014 order of the Marion Circuit Court

granting Adrian Brown's petition for declaration of rights to restore his good-time credit. In its order, the trial court found insufficient evidence to support the disciplinary action depriving Brown of good-time credit. After careful review, we affirm.

Brown was an inmate at the Marion Adjustment Center (hereinafter "MAC"). MAC is a private prison owned and operated through the Department of Corrections by Corrections Corporation of America. On October 15, 2012, Brown was working in food service at the facility when he was physically threatened by another inmate, Milford Thomas, and a fight ensued. When the MAC employee ordered them to stop fighting, they immediately complied. However, as a result of the altercation, Thomas required treatment of injuries suffered during the fight and was transferred to a hospital.

On November 13, 2012, a disciplinary hearing was held at which several witnesses testified and written statements of other witnesses were reviewed. The hearing officer also viewed camera footage of the incident. The camera footage was not made a part of the record but the contents of the videotape were described in detail on the disciplinary report form. The evidence presented at the hearing showed that Thomas was the initial aggressor during the physical altercation and that Brown was defending himself. Still, the hearing officer decided that Brown was guilty of "physical action resulting in death or injury of an inmate" and penalized him with 90-days segregation and the loss of 365 days of non-restorable good time credit.

Brown appealed the decision to the warden, but for unknown reasons, Brown's appeal of the warden's decision was not acted upon. In fact, the Department of Corrections informed Brown that his appeal had not been timely, and therefore, would not be acted upon. However, two weeks later, the Department of Corrections sent Brown a letter stating that it had now determined that the appeal was timely. Thereafter, the warden summarily denied the appeal.

On June 28, 2013, Brown filed a petition for declaratory judgment in Marion Circuit Court. In August 2013, the trial court directed the Appellants to prepare and file a scheduling order with deadlines for the filing of the record of the disciplinary hearing and briefs. The scheduling order, however, was not filed until November 1, 2013, after an inquiry by the trial court. Next, the scheduling was delayed by Brown's *pro se* motions seeking to obtain the camera footage examined at the initial hearing. The motions were denied. Subsequently, Brown filed a brief but the Appellants did not.

The trial court reviewed the record, including the documentation of the disciplinary hearing. Notwithstanding the minimal standard in such cases, which requires only a showing of "some proof" in support of a decision by a facility, the trial court held that it was unable to find any evidence of an infraction that would support the disciplinary action. *See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). Accordingly, on January 28, 2014, the trial court granted Brown's petition for a declaration of rights and ordered the Department of Corrections to

restore any service credit lost because of this incident. The order was entered on January 30, 2014. The Appellants now appeal this decision.

Our Court reviews the decision of a circuit court in a declaratory judgment action under the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure (CR) 52.01. *Baze v. Rees*, 217 S.W.3d 207, 210 (Ky. 2006). Under CR 52.01, the circuit court's findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the circuit court to assess the credibility of the witnesses. *Id.* (citation omitted).

As previously mentioned, it is well-established that a decision in a prison disciplinary hearing will be upheld if there is some evidence to support the findings of the committee. *Hill*, 472 U.S. at 454, 105 S.Ct. at 2773. Thus, the question before us is whether the trial court correctly adduced that evidence did not exist to support the decision of the hearing officer that Brown was culpable in the incident.

The Appellants argue that sufficient evidence existed to support the hearing officer's findings of Brown's guilt. Furthermore, the Appellants highlight that, in making the decision, the hearing officer viewed a video recording of the event. However, the Appellants conceded that, at least initially, Thomas, the other inmate involved, appeared to be the aggressor and Brown was defending himself.

Nonetheless, the Appellants argue that because Kentucky Correctional Policies and Procedures (CPP) 15.2 defines "physical action" as "any fighting, hitting, kicking, shoving, pushing, biting, using force or other similar types of

physical contact, throwing, squirting or spitting any time, substance or fluid,” and since Thomas’s injuries required hospital care, the hearing officer’s determination that Brown was guilty of engaging in physical action resulting in death or injury to an inmate should be upheld. Hence, the Appellants maintain that the trial court erred, and sufficient evidence existed to prove an infraction by Brown.

In the case at bar, however, the trial court judge adduced from the evidence, including a written report of the camera footage of the event, that the other inmate attacked Brown first and put his hands around his neck to choke him. And at this point, Brown defended himself. Thus, the trial court ascertained that Brown did not instigate the attack or participate in any manner except for purposes of self-defense, and he stopped as soon as directed by a prison officer. Significantly, the trial court observed that the record was devoid of any evidence that Brown caused the incident or did more than protect himself.

Self-defense is one of the oldest defenses available, and people are privileged to defend themselves against injury by another. Self-defense allows persons to use physical force when they reasonably believe it is necessary to protect themselves from another’s dangerous use of physical force against them. The correction and policy regulations proffered by the Appellants do not address the particular nature of the incident herein. Therefore, given the facts before the trial court that Brown was defending himself from an assault, we do not believe that its decision was clearly erroneous and affirm it.

CONCLUSION

Our review of this matter provides no evidence that the circuit judge was clearly erroneous in the findings of fact, and these findings are supported by substantial evidence. Accordingly, the decision of the trial judge was not clearly erroneous, and we affirm the decision of the Marion Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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