

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000981-MR

TRAVIS G. DALTON

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 12-CI-00376

STEVE HANEY, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; TAYLOR AND VANMETER, JUDGES.

TAYLOR, JUDGE: Travis G. Dalton brings this *pro se* appeal from a May 5, 2014, Order of the Boyle Circuit Court denying his Kentucky Rules of Civil Procedure (CR) 54.04 Motion for Reimbursement of Costs and Request for Order Reinstating All Good Time Loss with Return of All Restitution Monies Seized. We affirm.

Dalton is an inmate of the Kentucky Department of Corrections. In May 2012, while Dalton was incarcerated at North Point Training Center (North Point), an inmate was assaulted. Following an internal investigation, Dalton was charged with “physical action, resulting in death or injury of an inmate.” A prison disciplinary hearing was conducted by an adjustment officer, and the adjustment officer found Dalton guilty as charged. Dalton appealed the decision of the adjustment officer to the warden, and the warden denied relief.

Dalton subsequently filed a Petition for Declaration of Rights in the Boyle Circuit Court. The circuit court denied the petition, and Dalton directly appealed the circuit court’s order to the Court of Appeals (Appeal No. 2013-CA-000172-MR). In that appeal, Dalton argued that his constitutional right of due process had been violated. Dalton specifically argued that the Department of Corrections erred by refusing to furnish him with a copy of the investigatory report and that the adjustment officer erred by failing to independently verify the reliability of such report.

By Opinion rendered March 7, 2014, this Court affirmed in part and concluded that Dalton was not entitled to a copy of the investigatory report. However, the Court reversed in part and determined the adjustment officer erred by failing to independently verify the reliability of the investigatory report. Accordingly, the Court of Appeals remanded the case to the circuit court to direct the appellee to conduct another hearing before the adjustment officer and

specifically instructed the adjustment officer to indicate on the record whether the evidence was reliable and the basis therefore.

By order entered March 26, 2014, the circuit court directed the adjustment officer to provide Dalton another hearing in conformity with the Court of Appeals Opinion in Appeal No. 2013-CA-000172-MR. Before the second hearing was conducted by the adjustment officer, Dalton filed a CR 54.04 Motion for Reimbursement of All Costs and Request for Order Reinstating All Good Time Loss with Return of All Restitution Monies Seized in the circuit court on April 8, 2014. Therein, Dalton argued that “the first adjustment hearing proceedings and all collateral consequences incidental thereto are null and void,” thus, he was “entitled to restoration of all good time credits and forced forfeiture of his money. That is, the return of 730 days non-restorable good time credits and the return of \$411.40 . . . restitution.” Motion at 3.

By order entered May 5, 2014, the circuit court denied Dalton’s CR 54.04 motion. Therein, the circuit court stated:

The Court of Appeals ruled that the appellant was not constitutionally entitled to a copy of the investigatory report. However, they did find that the adjustment officer failed to independently verify the reliability of the report. As such, the case was remanded to this Court for further proceedings. Petitioner now argues that, because of the ruling by the Court of Appeals, he is entitled to reinstatement of his good time, return of all restitution paid to date, and reimbursement of court costs.

The petitioner argues in his motion that, due to the Court of Appeals ruling, he is back in the legal position he was in prior to the commencement of the adjustment

hearing proceedings at Northpoint. The Court would point out that the Court of Appeals did not reverse the ruling of the adjustment committee; rather it was remanded to this Court for further proceedings. As such, the petitioner is not entitled to the requested relief. . . .

This appeal follows.

Dalton argues that the circuit court erred by denying his motion under CR 54.04 for costs. Dalton maintains that he was the “prevailing party” and “successful party” before the Court of Appeals and is entitled to costs per CR 54.04 and Kentucky Revised Statutes (KRS) 453.040, respectively. We disagree.

In Dalton’s direct appeal (Appeal No. 2013-CA-000172-MR), the Court of Appeals merely held that the adjustment officer erred by failing to “independently assess the reliability” of the evidence. The Court of Appeals remanded the action for the adjustment officer to conduct another hearing to determine Dalton’s guilt or innocence. The Court specifically noted that “we are not requiring the Adjustment Officer to reach a different outcome.” Consequently, Dalton was neither a prevailing party under CR 54.04 nor a successful party under KRS 453.040 entitling him to costs.

Additionally, the circuit court possesses discretion in awarding costs under KRS 453.040, and there was no demonstrable abuse of discretion below.

In sum, we conclude that the circuit court did not commit reversible error by denying Dalton’s motion for costs.

For the foregoing reasons, the Order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Travis G. Dalton, *Pro Se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

J. Todd Henning, Kentucky
Department of Corrections
Frankfort, Kentucky