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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000993-MR

JOE CHATMAN — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 14-CI-00009

RAVONNE SIMS, WARDEN — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JONES, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: An inmate's constitutional right to due process is limited while he is incarcerated, and prison officials are given broad discretion in prison disciplinary proceedings. Inmate Joe Chatman appeals from the Oldham Circuit

Court's order dismissing his petition for declaration of inmate rights. For the following reasons, we affirm.

On October 30, 2013, while Chatman was incarcerated at the Roederer Correctional Complex in Oldham County, Corrections Lieutenant Lindsey Smith ("Lt. Smith") received reports of Chatman making sexual comments. When investigating the report, Lt. Smith spoke with Chatman, who admitted to making comments to another inmate, including comments that the inmate had "pretty eyes;" that he should "grow his hair out;" and calling him "boy." Chatman further told the other inmate, "Don't make me hurt someone over you." Chatman claimed the comments were made in jest. Lt. Smith recorded his conversation with Chatman and submitted the recording as part of his investigation report.

The adjustment officer ultimately found Chatman guilty of a Category IV-12 violation (inappropriate sexual behavior). The adjustment officer based his conclusion on Lt. Smith's statements and his report, as well as Chatman's admissions. Chatman appealed the decision to the warden, who agreed with the adjustment officer's conclusion and signed off on the disciplinary action. Thereafter, Chatman filed a petition for declaration of inmate rights with the Oldham Circuit Court. The court dismissed Chatman's petition for failure to state a claim upon which relief can be granted. Chatman filed a motion to alter, amend or vacate the court's order, the court denied his motion, and this appeal follows.

Chatman raises three issues in his brief. First, he claims he was denied due process when the prison officials refused to allow him to call witnesses at his hearing and when he was not permitted to confront his accuser. Next, he argues that the prison's evidence of his infraction was unreliable. Lastly, Chatman claims that he was not given a *Miranda* warning regarding his right to remain silent prior to Lt. Smith's investigation of the claims.

CR[1] 59.05 states: "A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment." In general, a trial court has unlimited power to alter, amend, or vacate its judgments. *Gullion v. Gullion*, 163 S.W.3d 888, 891-92 (Ky. 2005). The Supreme Court of Kentucky has limited the grounds for relief under CR 59.05 to those established by its federal counterpart, Federal Rules of Civil Procedure 59(e). *Id.* at 893.

> There are four basic grounds upon which a Rule 59(e) motion may be granted. First, the movant may demonstrate that the motion is necessary to correct manifest errors of law or fact upon which the judgment is based. Second, the motion may be granted so that the moving party may present newly discovered or previously unavailable evidence. Third, the motion will be granted if necessary to prevent manifest injustice. Serious misconduct of counsel may justify relief under this theory. Fourth, a Rule 59(e) motion may be justified by an intervening change in controlling law.

[1] Kentucky Rules of Civil Procedure.

Id. (internal footnote omitted). A trial court's ruling on a CR 59.05 motion is reviewed under an abuse of discretion standard. *Bowling v. Kentucky Dep't of Corr.*, 301 S.W.3d 478, 483 (Ky. 2009).

"A petition for declaratory judgment pursuant to KRS[2] 418.040 has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates may seek review of their disputes with the Corrections Department." *Smith v. O'Dea*, 939 S.W.2d 353, 355 (Ky. App. 1997). Although the Department of Corrections filed a motion to dismiss in response to Chatman'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 358 n.1. However, the typical summary judgment standard is insufficient to address the administrative discretion involved in the Department of Corrections' disciplinary procedures.

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

[2] Kentucky Revised Statutes.

> 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 fact-finding 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 Chatman's appeal, and that order may only be reversed if Chatman can raise specific, genuine issues of material fact that overcome that presumption.

First, Chatman argues that he was denied constitutional due process because he was not allowed to call witnesses and because he was not given an opportunity to confront his accuser. Chatman named Lt. Smith, Lt. Harper, an inmate called "Puvding," and other unidentified inmates as his requested witnesses.[3] The adjustment officer collected evidence from Lt. Smith and Lt. Harper, the only identifiable witnesses, and Lt. Harper stated that he had no knowledge of the incident. Thus, the adjustment officer made his decision based on Lt. Smith's testimony and report as well as Chatman's own admissions.

Prison disciplinary proceedings are administrative actions, and thus the "full panoply" of due process rights afforded a defendant in a criminal

[3] Chatman did not know the names of the inmates who were participants and or witnesses to the incident, so he requested that prison officials provide him with the names of these witnesses. This request was refused.

proceeding does not apply. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974, 41 L.Ed.2d 935 (1974). Instead, procedural due process in prison disciplinary hearings requires three things: "(1) advance written notice of the disciplinary charges; (2) an opportunity when consistent with institutional safety and correctional goals to call witnesses and present documentary evidence in defense; and (3) a written statement by the fact-finder of the evidence relied upon and the reasons for the disciplinary actions." *Superintendent Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985).

The Supreme Court in *Wolff* discussed in-depth the balance between an inmate's due process rights and the discretion necessarily afforded prison administrators in limiting witness testimony in disciplinary hearings. *See Wolff*, 418 U.S. at 566, 94 S.Ct. at 2980 (stating "[p]rison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority"). Permitting Chatman to call unidentified witnesses who allegedly informed correctional officers of his inappropriate behavior undoubtedly creates a risk of reprisal. Given the broad discretion afforded prison administrators in permitting inmates to call witnesses, we find no error in the adjustment officer's refusal to allow Chatman to call additional witnesses.

With respect to confrontation of his accuser, inmates are not afforded the same rights to confrontation as regular criminal defendants. Confrontation and cross-examination are "not rights universally applicable to all hearings." *Wolff*,

418 U.S. at 567, 94 S.Ct. at 2980. "If confrontation and cross-examination of those furnishing evidence against the inmate were to be allowed as a matter of course, as in criminal trials, there would be considerable potential for havoc inside the prison walls." *Id*. Hence, cross-examination and confrontation are not constitutionally required in prison disciplinary procedures. *Id*. at 567-68, 94 S.Ct. at 2980. The adjustment officer, therefore, did not err by refusing to allow Chatman to confront his accuser.

Next, Chatman argues that the evidence relied upon by the adjustment officer was not reliable evidence, and thus his conclusion was improper.

> 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.

Ramirez v. Nietzel, 424 S.W.3d 911, 916-17 (Ky. 2014) (citing *Walpole* and the Kentucky case which adopted the holding in *Walpole*, *Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997)). In addition, fundamental fairness demands that the evidence relied upon to punish an inmate must at least be reliable. *Byerly v. Ashley*, 825 S.W.2d 286, 288 (Ky. App. 1991). Chatman claims that the

adjustment officer erred by convicting him without establishing the reliability of the unknown accuser or the unknown victim.

The adjustment officer's decision was based on the testimony and report of Lt. Smith and Chatman's own recorded admissions. Even without establishing the reliability of Chatman's accuser, more than some evidence exists in the record to support his conviction. Thus, the some evidence standard is satisfied and due process has been afforded.

Lastly, Chatman claims that his constitutional rights were violated when he was not read his *Miranda* rights prior to his interview with Lt. Smith. He claims that had he been read his *Miranda* rights, he would have invoked his right to remain silent concerning the charged incident. However, prisoners do not have *Miranda* rights in disciplinary proceedings. *White v. Boards-Bey*, 426 S.W.3d 569, 577 (Ky. 2014) "[D]uring disciplinary proceedings prisoners do not enjoy the rights provided for in *Miranda*"). Therefore, this argument is without merit.

For the above reasons, the order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

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