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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001480-MR

JOHN STOKLEY — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY BUNNELL, JUDGE
ACTION NO. 13-CI-04680

STEVE HANEY, WARDEN;
AND SGT. JOEL HELMBURG, ADJ. OFC. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, D. LAMBERT, AND MAZE, JUDGES.

DIXON, JUDGE: Appellant, John Stokley, appeals *pro se* from an order of the Fayette Circuit Court granting summary judgment in favor of Appellees, Warden Steve Haney and Sergeant Joel Helmburg, both officials at the Blackburn Correctional Complex, and dismissing Appellant's petition for review of his prison disciplinary hearing. Finding no error, we affirm.

On May 13, 2013, while Appellant was serving a felony sentence at the Blackburn Correctional Complex ("BCC"), Correctional Captain Eric Sizemore obtained a letter written by Appellant to an individual named "Sommer." The letter had apparently been written several months earlier while Appellant was living in a halfway house following his parole,[1] and concerned incidents that had occurred while he was still lodged at BCC before he was paroled. Therein, Appellant wrote that he (1) while on work duty at the Kentucky Horse Park, had spliced into a phone line running to a fax machine to obtain phone service and hid a phone jack and a phone; (2) was receiving "spice, weed, tobacco every week and other stuff here and there"; and (3) had two women visit him at the horse park to have sex. Based upon the information contained in the letter, Appellant received disciplinary write-ups for the negligent or deliberate destruction of property under $100, possession or promoting dangerous contraband, and inappropriate sexual behavior with another person.

Later the same day, Captain Sizemore interviewed Appellant, who indentified the intended recipient of the letter as an ex-girlfriend. Appellant admitted to writing the letter but claimed that he had not, in fact, actually committed the acts he referred to in the letter, but was simply "running a game" on the girl to get her to send him money and pictures. Consequently, Appellant was

[1] Although it is not entirely clear from the record, it appears as though Appellant had initially been incarcerated at BCC but had been paroled and transferred to a halfway house in Louisville in December 2012. Appellant was re-incarcerated at BCC on February 5, 2013.

then charged with a fourth disciplinary violation for using the mail to obtain money, goods, or services by fraud.

As a result of the above disciplinary write-ups, Appellant was transferred to another area of BCC pending further investigation. During the pack-up of Appellant's personal items, Correctional Officer Marcus Christison discovered a piece of toilet paper concealing tobacco hidden inside of a pair of blue shoes located in Appellant's personal area. When Officer Christison then went to have Appellant sign a property sheet, Appellant asked him if he had found what was hidden in the shoes. Officer Christison confirmed that he had found tobacco, to which Appellant responded "did you give that to them" and "just forget we had this conversation." Appellant was thereafter written up for use/possession of tobacco products in an unauthorized area and for smuggling contraband items into/out of/within the institution.

A hearing was held on the disciplinary charges on May 24, 2013. Appellant attended the hearing and was assisted by an inmate legal aid. Appellant initially claimed that he did not write the letter but then stated that the letter referred to incidents that had occurred six months earlier and that prison officials unduly delayed charging him with the infractions. With respect to the possession of the tobacco, Appellant denied making any statements to Officer Christison and further claimed that the officer violated prison policy when he packed up Appellant's belongings without another officer present. At the close of the hearing, the adjustment officer found Appellant guilty of all six violations. The

adjustment officer noted that Appellant had admitted to Captain Sizemore that he wrote the letter which, in turn, constituted an admission that he committed the infractions described therein. Further, Captain Sizemore confirmed from prison phone records that Appellant had placed a call on May 2, 2013, wherein he specifically discussed a woman visiting him at the horse park for sexual purposes. Finally, the adjustment officer concluded that based upon the report and statements of Officer Christison, as well as the physical evidence obtained, Appellant had been in possession of tobacco in contravention of prison policy. As a result of the six disciplinary violations, Appellant was sentenced to a total of 180 days of disciplinary segregation (serve 90 days), as well as he forfeited 600 days of good time and received eighty hours of extra duty following his release from segregation.

Appellant was transferred to Sandy Hook Correctional Complex and thereafter appealed his convictions to Appellee, BCC Warden Steve Haney, who upheld the adjustment officer's findings and disciplinary sanctions. Appellant then filed a Petition for Declaration of Rights in the Fayette Circuit Court on November 14, 2013, alleging various constitutional violations. By order entered on August 14, 2014, the trial court granted Appellee's motion for summary judgment, concluding that Appellant's constitutional rights had not been violated and that the record contained "some evidence" sufficient to uphold the adjustment officer's disciplinary findings. This appeal ensued.

"A petition for declaratory judgment pursuant to KRS 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). 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. Rather, the applicable standard for addressing prison disciplinary actions is 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. The court must be sensitive to the possibility of prison abuses and not dismiss legitimate petitions merely because of unskilled presentations. *Jackson v. Cain*, 864 F.2d 1235 (5th Cir. 1989). However, it must also be free to respond expeditiously to meritless petitions. By requiring inmates to plead with a fairly high degree of factual specificity and by reading their allegations in light of the

> full agency record, courts will be better able to perform both aspects of this task.

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 herein presumed that the Department of Corrections acted appropriately in denying Appellant's appeal, and that order may only be reversed if Appellant can raise specific, genuine issues of material fact that overcome that presumption.

Appellant first argues that the adjustment officer's findings that he was guilty of all six disciplinary infractions were based on unreliable and insufficient evidence. With respect to the violations stemming from the letter, Appellant seizes on the fact that the disciplinary reports list the incident date as May 23, 2013. Appellant contends that he could not have possibly committed the charged infractions on that date because his job assignment at the horse park ended in December 2012 when he was paroled. Similarly, Appellant discounts the significance of the phone call, noting that it was placed on May 2, 2013, and thus could not be evidence of an infraction which occurred on May 23, 2013. Finally, Appellant argues that he did not make the alleged statements to Officer Christison concerning the tobacco and, even if he did, because the officer violated the policy requiring another officer to be present, there was no one to corroborate said

statements. Accordingly, Appellant contends that the trial court erred in ruling that some evidence existed to support the adjustment officer's findings. We disagree.

Courts reviewing inmate disciplinary proceedings are to apply a very deferential standard of review. "[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits." *Supt. Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985). This standard is met if "'some evidence from which the conclusion of the administrative tribunal could be deduced . . . .'" *Id.* (*quoting U.S. ex rel. Vajtauer v. Comm'r of Immigration*, 273 U.S. 103, 106, 47 S.Ct. 302, 304, 71 L.Ed. 560 (1927). Kentucky courts adopted the "some evidence" standard in *Smith v. O'Dea*, a case which also cautioned the trial courts presiding over such declaratory actions to continue to "be vigilant in detecting and steadfast in remedying genuine prison abuses." 939 S.W.2d at 358. 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). The initial disciplinary violations arose out of statements made in the letter by Appellant himself. Contrary to Appellant's assertion, we agree with the trial court that disciplinary reports list May 23, 2013, as the incident date only because that is the date Captain Erickson received the letter, not the date upon which the acts alleged in the letter occurred. It is clear from the letter itself that Appellant was describing incidents that had taken place several months earlier while he was working at the horse park. He essentially confirmed such during the May 2, 2103 phone call. Further, when initially interviewed by Captain Sizemore, Appellant conceded that he wrote the letter but claimed that he made the incidents up in an attempt to convince the recipient to send him money or pictures. Thus, Appellant further admitted to attempting to use the mail to obtain money or goods. Finally, the last two violations stemmed from tobacco found in Appellant's shoe, after which he questioned the officer who had found it about what had happened to the contraband. Even absent Appellant's alleged statements to Officer Christison, the physical evidence found in his possession was sufficient to support the violation.

We must conclude that Appellant's own six-page letter, phone records, the contraband found in his possession, and corroborating statements of prison officials made during the investigation constituted "some evidence" to support the disciplinary findings made at the hearing.

Appellant next claims that the letter used against him was illegally obtained. Specifically, Appellant argues that because he was lodged in a halfway

house at the time the letter was written, it was a private protected communication. Appellees respond that even though Appellant was transferred to the halfway house, he was still subject to the Department of Corrections supervision and his mail was subject to being opened.

Admittedly, it is not clear from the record how Captain Sizemore obtained the letter, whether it was from the recipient or from an individual at the halfway house that intercepted it before it was mailed. The fact remains, however, that Appellant initially admitted to writing it for the purpose of trying to obtain money from the recipient. In any event, we are of the opinion that the trial court correctly concluded that parolees are entitled to lower Fourth Amendment protections and that prison officials did not violate Appellant's constitutional rights by using the letter against him. *See Bratcher v. Commonwealth*, 424 S.W.3d 411 (Ky. 2014).

Appellant next claims that his constitutional due process rights were violated when he was denied the right to call witnesses and present evidence at the hearing. We disagree.

Prison disciplinary proceedings are administrative actions, and thus the "full panoply" of due process rights afforded a defendant in a criminal 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." *Hill*, 472 U.S. at 454, 105 S.Ct. at 2773, 86 L.Ed.2d 356 (1985).

As the trial court noted, there is no evidence to support Appellant's claim that he made several requests to call witnesses at the hearing. BCC's policies require that an inmate identify witnesses for a hearing no less than twenty-four hours prior to the hearing. It is clear from the disciplinary write-ups and investigation reports that Appellant stated that he had no witnesses. Further, Appellant did not attempt to call witnesses during the hearing or raise the issue in any other manner before the adjustment officer. Similarly, we must disagree that Appellant was denied the right to review or present evidence during the hearing. Although Appellant did not, in fact, receive a full copy of the letter prior to the hearing, he was provided the parts of the letter that pertained to the charged violations, as well as a summary of the entire letter. Appellant also received full copies of the disciplinary reports that also summarized the letter's contents. We agree that such satisfied the due process requirements set forth in *Hill*.

Finally, Appellant contends that he was denied a fair hearing by an impartial tribunal. Essentially, Appellant claims that because the adjustment officer held a lower rank than Captain Sizemore, Captain Sizemore was able to become the "judge, jury, and executioner." We agree with the trial court, however, that the fact that an adjustment officer holds a subordinate position to the

investigating officer does not, in and of itself, demonstrate that the former becomes a biased decision-maker. There is simply no evidence in the record to indicate that the adjustment officer herein was somehow beholden or influenced by Captain Sizemore's superior rank.

Based upon the record herein, we conclude that the trial court properly determined that Appellees met the "some evidence" standard for summary judgment in prison disciplinary hearing reviews. *Smith,* 939 S.W.2d 353. Accordingly, the order granting summary judgment and dismissing Appellant's petition was proper.

The order of the Fayette Circuit Court is hereby affirmed.

CONCUR.

BRIEF FOR APPELLANT:
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BRIEF FOR APPELLEES:
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