

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-000720-MR

PANGIE BOOKER

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE CHARLES R. HICKMAN, JUDGE  
ACTION NO. 16-CI-00030

LIEUTENANT KRISTEN GOETZINGER;  
WARDEN JANET CONOVER; AND  
KENTUCKY CORRECTIONAL INSTITUTION  
FOR WOMEN

APPELLEES

OPINION  
AFFIRMING

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BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Pangie Booker appeals from an order dismissing her Petition for Declaration of Rights in which she requested that her disciplinary conviction be reversed. Finding no error, we affirm.

On October 26, 2015, Appellant and three other inmates were involved in a physical altercation at the Kentucky Correctional Institute for Women. During this altercation, inmate Cassandra Sergeant was seriously injured. The record reflects that Appellant did not instigate the altercation, nor did she ever touch Ms. Sergeant.

Appellant was charged with violating policy number 15.2 of the Kentucky Corrections Policies and Procedures (“CPP”). Specifically, she was charged with a Category 7-02 violation - physical action resulting in the death or serious injury of another inmate. On November 10, 2015, an Adjustment Committee Hearing was held to consider what punishment, if any, Appellant should receive. Appellant admitted to being involved in the fight; however, denied touching Ms. Sergeant. An employee who witnessed the altercation also testified that Appellant did not touch Ms. Sergeant. After hearing testimony, the committee found Appellant guilty of the violation. The committee took into account that Appellant did not start the altercation and did not touch Ms. Sergeant; however, the committee found her guilty because she was an active participant in a physical altercation between four inmates, during which, one inmate was seriously injured. Appellant was given 180 days of disciplinary segregation and lost 730 days of good time credit.

Appellant appealed the committee’s judgment to the Warden, who affirmed. The underlying Petition was then filed. Appellant raised multiple arguments in her petition; however, the only issue before this Court involves the

lack of evidence to support the judgment of the committee. Appellant argued that because she did not touch Ms. Sergeant, she could not be held accountable for the serious injuries she sustained. Appellant requested that the circuit court restore her good time credit. The circuit court dismissed the petition pursuant to Kentucky Rule of Civil Procedure (“CR”) 12.02(f) and this appeal followed.

CR 12.02(f) concerns “failure to state a claim upon which relief can be granted[.]” When determining whether or not to dismiss a case under CR 12.02(f),

“[t]he court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

*James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002) (footnote and citation omitted). Matters of law are reviewed *de novo* by this Court. *Id.* at 884.

As pertaining to prison disciplinary proceedings, the United States Supreme Court has

concluded that minimum due process requirements are met if “the findings of the disciplinary board are supported by some evidence of record.” . . . .

In applying the “some evidence” standard, the Court in [*Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985)] noted that the analysis “does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of evidence.” Nor

does the “some evidence” standard require that the evidence logically preclude any conclusion but the one reached by the disciplinary board. Rather, the “relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.”

Clearly, courts are called upon to use a common sense approach to balancing the divergent interests at stake in this analysis. The U.S. Supreme Court in *Hill* concluded that this balance is met by “[r]equiring a modicum of evidence to support a decision to revoke good time credits[.]” This would “help to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens.”

*Webb v. Sharp*, 223 S.W.3d 113, 118 (Ky. 2007) (citations omitted).

Appellant’s argument on appeal is that there was no evidence to find her guilty of the Category 7-02 violation of serious injury to another inmate. CPP 15.2(II)(E)(1) states:

- A person may be found to have committed the violation listed in this policy if he:
- a. Attempts to commit the violation;
  - b. Solicits another or others to commit the violation;
  - c. Conspires with another or others to commit the violation;
  - d. Aids the action of another or others in committing the violation.

Appellant claims she could not have been found guilty of the violation because there was no evidence she attempted, solicited, conspired, or aided in the serious injury of Ms. Sergeant. Counsel for Appellees argues that the “some evidence” standard was met because Appellant was involved in a four-person altercation, thereby aiding in the serious injury of Ms. Sergeant.

The facts of this case are not in dispute: Appellant did not begin the altercation and did not touch Ms. Sergeant. The question we must answer is can Appellant be responsible, even slightly, for Ms. Sergeant's injuries? We believe that she can. The "some evidence" standard is a low threshold to overcome. We believe the Adjustment Committee correctly found that a modicum of evidence existed to find that Appellant committed a Category 7-02 violation. The physical altercation involved four inmates who actively participated in the fracas and were in close proximity to each other; therefore, there was "some evidence" that Appellant aided in causing the injuries sustained by Ms. Sergeant.

Based on the foregoing, we affirm the judgment of the circuit court.

ALL CONCUR.

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