

RENDERED: OCTOBER 20, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001640-MR

BRANDON MARTIN

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 16-CI-00051

KENTUCKY JUSTICE & PUBLIC
SAFETY CABINET

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: J. LAMBERT, MAZE, AND NICKELL, JUDGES.

MAZE, JUDGE: Brandon Martin appeals from an order of the Boyle Circuit Court dismissing his appeal from a prison disciplinary proceeding. We agree with the circuit court that the outcome of the proceeding comported with the requirements of due process and was supported by some evidence. Hence, we affirm.

At all times relevant to this appeal, Martin was an inmate at the Northpoint Training Center in Burgin, Kentucky. On July 14, 2015, Inmate #253003 reported that Martin forced him to provide oral sex in a dormitory bathroom. The matter was referred to Sgt. Stephen Boles for an investigation as a potential violation of the Prison Rape Elimination Act (PREA).¹ Sgt. Teresa Esque conducted the investigation for the disciplinary violation. After reviewing the evidence, they both concluded there was sufficient evidence to substantiate the allegation of sexual assault. In addition to the inmate's report, the evidence included video surveillance footage showing Martin and the inmate enter the bathroom at the time of the alleged assault. Martin initially denied the assault, but at the hearing, he stated that the contact was consensual.

The matter was submitted to the Adjustment Officer for a hearing on August 21, 2015. Martin produced written statements from other inmates indicating that Inmate # 253003 fabricated the allegations. Martin also produced an affidavit from Inmate #253003 which recanted the allegations. However, the Adjustment Officer denied Martin's request to call the inmate as a witness.

Following the hearing, the Adjustment Officer found Martin guilty of sexual assault against an inmate. The Adjustment Officer directed that Martin forfeit 360 days of non-restorable good-time credit. The Adjustment Officer also imposed 180 days of disciplinary segregation, with 90 of those days suspended for

¹ 42 U.S.C. §§ 15601-15609 (now 34 U.S.C. §§ 30301-30309). The PREA requires prison officials to collect data for each incident of prison rape and on the cumulative effects of prison rape. 34 U.S.C. at § 30303.

the full period. On appeal, the Warden upheld the Adjustment Officer's determination.

Martin then filed this declaratory judgment action pursuant to KRS² 418.040. After considering Martin's petition and the Cabinet's response, the circuit court dismissed the action. Martin now appeals to this Court.³

In prison disciplinary proceedings "the full panoply of rights due a [criminal] defendant ... does not apply." *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974). Furthermore, the United States Supreme Court has stated that procedural due process in this context requires only: "(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 factfinder of the evidence relied on and the reasons for the disciplinary action." *Superintendent, Mass. Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985).

These due process requirements are generally met "if some evidence supports the decision by the prison disciplinary board." *Id.* at 455, 105 S. Ct. at

² Kentucky Revised Statutes.

³ Martin's Notice of Appeal names the warden as respondent in the caption, but identifies the Justice & Public Safety Cabinet as respondent in the text of the Notice. As a general rule, the warden of the prison is an indispensable party to an appeal from a declaratory judgment regarding a prison disciplinary action. But in such cases, it is sufficient to name the agency or the agency head as a party. *Lassiter v. American Express Travel Related Services Co., Inc.*, 308 S.W.3d 714, 719 (Ky. 2010). Thus, Martin's Notice of Appeal was sufficient to bring all indispensable parties before this Court.

2773. Furthermore, “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[]’ ” and “[e]ven ‘meager’ evidence will suffice.” *Ramirez v. Nietzel*, 424 S.W.3d 911, 916-17 (Ky. 2014), quoting *Walpole*, 472 U.S. at 455–56, 57, 105 S. Ct. at 2768.

Martin primarily argues that the Adjustment Officer improperly denied his request to call Inmate #253003 as a witness. He cites to *Ramirez v. Nietzel*, *supra*, which holds that “the decision to refuse witnesses or evidence must be ‘logically related to preventing undue hazards to institutional safety or correctional goals.’” *Id.* at 918, quoting *Ponte v. Real*, 471 U.S. 491, 497, 105 S. Ct. 2192, 85 L. Ed. 2d 553 (1985). Here, the Adjustment Officer noted in the record that the witness at issue was the victim. Given the nature of the allegations, the limited explanation offered by the Adjustment Officer was sufficient.

Martin next argues that the Adjustment Officer’s findings were not supported by “some evidence.” He mainly argues that the Adjustment Officer gave improper weight to the information provided in Sgt. Boles’s and Sgt. Esque’s investigative reports. However, the surveillance footage confirmed that Martin and the victim entered into the bathroom at the time of the alleged assault. Martin admitted that he and the victim engaged in oral sex, but Martin maintained that it was consensual. Although the victim subsequently recanted the allegation that Martin used force, we agree that there was some evidence supporting the finding that Martin committed a sexual assault.

Finally, Martin argues that the Adjustment Officer should have been disqualified because he participated in the investigation of the sexual assault charge. CPP⁴ 15.6(II)(A)(4). The report of the hearing indicates that Sgt. Esque served as Investigating Officer and Lt. Merle Back served as Adjustment Officer. Martin asserts that Lt. Back had previously questioned him about the allegations. But as the circuit court noted, Lt. Back's prior involvement concerned the PREA investigation, not the disciplinary charge at issue in this case. Under the circumstances presented in this case, Lt. Back's prior involvement did not compel his disqualification as Adjustment Officer or implicate Martin's due process rights.

Accordingly, we affirm the order of the Boyle Circuit Court dismissing Martin's declaratory judgment action.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brandon Martin, *pro se*
Green River Correctional Complex
Central City, Kentucky

BRIEF FOR APPELLEE:

Angela T. Dunham
Kentucky Justice & Public Safety
Cabinet
Office of Legal Services
Frankfort, Kentucky

⁴ Corrections Policies and Procedures.