

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-000099-MR

MICHAEL STEWART

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 16-CI-04186

TIFFANY RATLIFF, WARDEN,  
BLACKBURN CORRECTIONAL  
COMPLEX

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JONES, J. LAMBERT AND STUMBO, JUDGES.

LAMBERT, J., JUDGE: Michael Stewart, acting *pro se*, appeals from an order of the Fayette Circuit Court denying his petition for declaration of rights. We affirm.

On the morning of June 17, 2016, a call for assistance was made from Dorm 4 of the Blackburn Correctional Complex. The call was for an inmate, later

identified as Stewart, who was described as being “high.” Prison medical personnel were alerted to help assess Stewart’s condition. Nurse Gwyn Hymer arrived on the scene and after examining Stewart, she notified paramedics because Stewart was unresponsive. Nurse Jo King arrived at Dorm 4 for additional support. Nurse Hymer administered a dose of Narcan, which caused Stewart to become responsive. Nurse Hymer indicated that she believed Stewart was under the influence of an “unknown substance.” Stewart was taken to the University of Kentucky (UK) Hospital for treatment. After a few hours of evaluation and drug testing, Stewart was released by the hospital and returned to the prison facility the same day.

Sergeant Daniel George conducted an investigation into the incident. This investigation included interviewing Stewart, who stated that he did not know what had happened. Stewart told Sergeant George that he had not taken any drugs that day, was not on any prescribed medications, and did not have any abnormal medical conditions. Following the investigation, Stewart was charged with a violation of Department of Corrections Policies and Procedure (CPP) 15.2 Category VI-3, Possession or Promoting of Dangerous Contraband. Stewart was given a copy of the Disciplinary Report and was advised that he had a right to call witnesses and be represented by an inmate legal aide at the disciplinary hearing.

Stewart attended the disciplinary hearing with an inmate legal aide. He testified that he had taken an allergy pill and amino acid pill the day of the incident, but he denied having taken any drug or narcotic substance. The

Adjustment Officer reviewed a report from the medical staff that confirmed a dose of Narcan had been administered to Stewart because the responding nurse believed he was under the influence of an unknown substance. The Adjustment Officer found Stewart guilty of the charge of possession or promoting of dangerous contraband and assessed a penalty of ninety days in disciplinary segregation and the forfeiture of 180 days of good time credit.

Stewart appealed the findings to the prison Warden, Tiffany Ratliff, challenging the Adjustment Officer's decision based upon a violation of his due process rights due to a lack of evidence to support the charge and the failure to provide him with the documentation on tests performed at the hospital. Shortly thereafter, the Warden issued a decision summarily affirming the Adjustment Officer's decision.

After receiving a copy of records from the hospital the following month, Stewart submitted a letter to the Warden seeking reconsideration of the disciplinary action against him. In response, the Warden stated in a letter: "Your disciplinary report was finalized on 7/19/16 with that being said, nothing further can be done."

Stewart filed a petition for declaration of rights pursuant to Kentucky Revised Statute (KRS) 418.040 challenging the disciplinary action as a violation of his due process rights. The respondents filed a motion to dismiss the action for failure to state a claim under Kentucky Rule of Civil Procedure (CR) 12.02(f). On

December 27, 2016, the circuit court entered an order granting the motion to dismiss the petition. This appeal follows.

Prison discipline proceedings are not the equivalent of criminal prosecutions and “the full panoply of rights due a defendant in such proceedings does not apply.” *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). In a prison disciplinary hearing, due process is provided when a prisoner receives three things: (1) advance written notice of the charges; (2) an opportunity to call witnesses and present a defense; and (3) a written statement by the factfinder detailing the evidence relied upon and the basis of the result. *Superintendent, Mass. Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985) (summarizing *Wolff*, 418 U.S. at 563-67). Courts are charged only with review of such decisions, and prison officials are afforded broad discretion. Appellate courts must affirm if there is “some evidence” supporting the charge. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774. *See also Smith v. O’Dea*, 939 S.W.2d 353 (Ky. App. 1997) (adopting federal standards). “[T]he relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Hill*, 472 U.S. at 455-56, 105 S.Ct. at 2774 (citations omitted). Even “meager” evidence has been found to meet this burden. *Id.*, 472 U.S. at 457, 105 S.Ct. at 2775; *Ramirez v. Nietzel*, 424 S.W.3d 911, 917 (Ky. 2014). “Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment

of the credibility of witnesses, or weighing of the evidence.” *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774.

Stewart contends that the disciplinary action violated his substantive due process rights with respect to exculpatory evidence. First, he asserts that the hospital records represented exculpatory evidence because they established that he was not under the influence of any drugs or alcohol based on the fact that the tests for the presence of drugs in his system were negative. He alleges the prison officials “intentionally hid the results of the drug testing” at the hospital, and thereby prevented him from presenting that evidence. First, we note that Stewart has presented no factual information to support his claim that the prison officials “intentionally hid” the information in the medical records from him. Stewart was aware that he had undergone evaluation including drug testing while at the hospital, and there is no evidence that prison officials prevented him from obtaining those records; rather, he was able to obtain them on his own and included them as exhibits in his petition for declaration of rights. In fact, in his initial appeal to the Warden, Stewart stated: “I was taken to UK hospital the same day, but I was never given the results of the testing. This is vital information that will prove my innocents (sic).”

First, Stewart relies on CPP 15.6 (II)(C)(4)(b)(3)(c) which provides once the investigation is complete, the investigator is required to:

Provide the inmate with a copy of all documents to be used by the Adjustment Committee or Adjustment Officer unless the disclosure of those documents

constitutes a threat to the safety and security of an inmate, the public, or the institution. The inmate is not entitled to documents or other evidence that is not submitted for the hearing. Documents include reports, photographs, tests, tape recordings or other written materials to be used as evidence.

However, the medical records were not used by the adjustment officer and were not submitted or requested by Stewart.

Stewart also cites to the recent case of *Ramirez v. Nietzel, supra*. In *Ramirez*, the Supreme Court of Kentucky addressed a prison disciplinary proceeding that arose out of fighting between inmates at Northpoint Training Center, where the inmate requested that the Adjustment Officer review footage of the fights to establish his alibi that he had been asleep during the fight. Because such footage possibly provided exculpatory evidence, the Supreme Court held that the Adjustment Officer improperly failed to review and consider the security video because he “must review security footage *if an inmate requests such review.*” *Ramirez*, 424 S.W.3d at 920 (footnote omitted) (emphasis added). The court in *Ramirez* adopted the law set out in a Seventh Circuit case, which declared:

“[w]hen a prisoner maintains that he was denied a meaningful opportunity to present a defense due to [an AO’s] refusal to consider exculpatory evidence, then procedural due process requires a [circuit] court to conduct an *in camera* review of the evidence” to determine whether it was indeed exculpatory and whether, in light of the new evidence, “some evidence” existed for the AO’s finding of guilt.

*Id.* (quoting *Felder v. McBride*, 121 F. App’x 655, 656-57 (7th Cir. 2004)). The Kentucky Supreme Court remanded the action to the circuit court to review the

security footage *in camera*. *Id.* Similarly, in *Foley v. Haney*, 345 S.W.3d 861, 864 (Ky. App. 2011), this Court held that the inmate had a right to request and have the hearing officer review medical records consistent with the inmate's due process right to present a defense as stated in *Wolff*.

In this case, however, Stewart did not request that the Adjustment Officer review the hospital medical records. Moreover, in his appeal to the Warden, Stewart merely complained about not receiving the medical records prior to the hearing. In addition, Stewart did submit the medical records with his petition for declaration of rights to the circuit court. The circuit court held that the statements from the medical personnel that Stewart was under the influence of an unknown substance and that Narcan was needed to revive him provided "some evidence" to support the finding that he had committed a disciplinary infraction even though the court had the opportunity to review the medical records.

Moreover, Stewart exaggerates the exculpatory significance of the medical records. While the tests for several drugs were negative, the report stated "[p]atient presentation consistent with drug intoxication" and "corrections officers think the patient may have consumed bath salts or some other drug." The tests did not include an analysis for bath salts or all potential drugs that could have caused his symptoms. Under these circumstances, Stewart has not established that he was denied due process with respect to the disciplinary proceeding. Consequently, the circuit court did not err in denying Stewart's petition for declaration of rights.

For the foregoing reasons, we affirm the order of the Fayette Circuit

Court.

JONES, JUDGE, CONCURS.

STUMBO, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

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Burgin, Kentucky

BRIEF FOR APPELLEE:

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