

RENDERED: OCTOBER 6, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2017-CA-000272-MR

WALTER BURCH

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NO. 16-CI-00015

RANDY WHITE, WARDEN

APPELLEE

OPINION  
AFFIRMING

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

JONES, JUDGE: Walter Burch, an inmate at the Kentucky State Penitentiary, brings this *pro se* appeal from the Lyon Circuit Court order dismissing his petition seeking a declaration of rights. He contends he was not afforded due process at his administrative disciplinary hearings. Because Burch has not shown that he has a protected liberty interest giving rise to due process protections, we affirm.

After a June 1, 2015, administrative disciplinary hearing, Burch was found guilty of inappropriate sexual behavior with another person. As a result, he was sanctioned with a penalty of ninety days' disciplinary segregation. On January 11, 2016, after another disciplinary hearing, Burch was found guilty of tampering with physical evidence or hindering investigation and assessed sixty days' disciplinary segregation.

Burch sought a declaration of rights in the Lyon Circuit Court claiming he did not receive due process at his hearings. Specifically, he asserted that the evidence was insufficient, he was unable to call necessary witnesses, and the descriptions of the incidents were inappropriate and inaccurate. The circuit court dismissed Burch's action for failure to demonstrate an interest protected by the Due Process Clause, noting that a prisoner does not have a protected liberty interest in being free from segregation. The court further found that the hearing Burch was afforded complied with the requirements of due process. Burch appeals.

An inmate making a Fourteenth Amendment procedural due process claim "must demonstrate that he was deprived of a protected liberty or property interest by arbitrary governmental action." *Hill v. Thompson*, 297 S.W.3d 892, 897 (Ky. App. 2009). "A protected liberty interest may arise from two sources - the Due Process Clause itself and state law or regulations." *Marksberry v. Chandler*, 126 S.W.3d 747, 749 (Ky. App. 2003) (citations omitted).

On appeal, Burch insists the circuit court erred when it found that he failed to demonstrate a protected interest because, in addition to complaining to the circuit court about his disciplinary segregation, he also complained of not receiving meritorious good-time credits in the months he was subject to disciplinary action. He argues that Kentucky Revised Statute (KRS) 197.045 creates a right to future meritorious good time credits and, therefore, he has a liberty interest in receiving them.

To support his argument, Burch cites *Montgomery v. Anderson*, 262 F.3d 641 (7th Cir. 2001), in which the Seventh Circuit Court of Appeals held that Indiana statutes created a liberty interest in future good-time credits. However, Burch's reliance on the holding in *Anderson* is misplaced. The court in *Anderson* found a liberty interest in the opportunity to receive good-time credits because the Indiana statutes at issue left administrators little discretion in awarding the credits. Therefore, the prisoners had "more than a subjective hope" of receiving them. *Id.* at 645.

Kentucky's statute is significantly different because it permits considerable discretion in awarding meritorious good time credits. KRS 197.045 reads in relevant part:

(1) Any person convicted and sentenced to a state penal institution:

...

(b) *May* receive a credit on his or her sentence for:

...

2. Performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, *awarded at the discretion of the commissioner* in an amount not to exceed seven (7) days per month[.]

(Emphasis added). We have explained that “[t]he law in this Commonwealth as it pertains to awards of meritorious good time is clear. Such awards are entirely discretionary and inmates possess no automatic entitlement to them.” *Hill v. Thompson*, 297 S.W.3d 892, 897 (Ky. App. 2009). “It is the well-established law of this Commonwealth that an inmate has no liberty interest in the receipt of meritorious good time under KRS 197.045 since it is awarded entirely at the discretion of the [Department of Corrections].” *Id.* See also *Grinter v. Knight*, 532 F.3d 567, 575 (6th Cir. 2008) (Citation and internal quotation marks omitted) (“A Kentucky inmate possesses no inherent constitutional right . . . to accumulate good-time credits.”). Accordingly, contrary to Burch’s assertion, he had no protected interest in the receipt of meritorious good-time credits. Therefore, the protections of due process were not triggered and the circuit court properly dismissed his action.

For the foregoing reasons, the order of the Lyon Circuit Court dismissing Burch’s action is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Walter Burch, *pro se*  
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BRIEF FOR APPELLEE:

Angela T. Dunham  
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