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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-002017-MR

SHANE BRIGHT — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 15-CI-01033

DEPARTMENT OF CORRECTIONS, STEVE HANEY, WARDEN; BLACKBURN CORRECTIONAL COMPLEX, KENDALL DUNCAN, ADJUSTMENT OFFICER; BLACKBURN CORRECTIONAL COMPLEX, RICK ROWLETTE, WARDEN — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND JONES, JUDGES.

COMBS, JUDGE: Shane Bright appeals from the Franklin Circuit Court's dismissal of his petition for a declaratory judgment action requesting review of prison disciplinary proceedings. After our review, we affirm.

Bright contests two disciplinary reports that he received while housed at Blackburn Correctional Complex (BCC). The first occurred in the dining hall when Bright went to get breakfast outside his assigned meal time. A Corrections Officer (CO) approached Bright and told him to hurry up and eat -- despite his tardiness. Bright responded that he always ate at this time and asked if she told other inmates the same thing. The CO filed a disciplinary report against Bright and reported that he raised his voice and argued with her. The adjustment officer found Bright guilty of interfering with an employee in the performance of her duty.[1] Bright received a penalty of forfeiture of sixty days of good time credit. Bright appealed the disciplinary report to the warden, who upheld the decision.

The second disciplinary report occurred after Bright approached the security window and used explicit language in a statement about BCC, the warden, and other BCC personnel. There were three witnesses along with security camera footage of the incident. As a result, Bright was charged with using disrespectful language/gestures/actions toward a non-inmate.[2] He was found guilty by the adjustment officer and received another forfeiture of sixty days of good time credit. Bright also appealed this finding to the warden and was denied relief.

[1] 501 Kentucky Administrative Regulation ("KAR") 6:020, Kentucky Department of Corrections Policy and Procedure ("CPP") 15.2(II)(C)(III)(1).

[2] CPP 15.2(II)(C)(III)(20).

Bright petitioned the Franklin Circuit Court for a declaration of rights, alleging violation of his rights to due process and equal protection. The trial court dismissed the action pursuant to CR[3] 12.02 for failure to state a claim upon which relief could be granted and for failure to exhaust administrative remedies. In its order, the trial court found that "some evidence" had been presented at the adjustment hearings to support a finding of guilt. It also found that the hearings had satisfied all due process and equal protection requirements for a prison disciplinary proceeding. Additionally, the trial court found that Bright had not exhausted his administrative remedies on his remaining claims. This appeal followed.

We first determine whether Bright has failed to exhaust his administrative remedies on the claims that he brings. KRS[4] 454.415 defines the failure to exhaust administrative remedies through explicit provisions pertaining to an inmate's filing of civil actions:

> (1) No action shall be brought by or on behalf of an inmate, with respect to:
>
> (a) An inmate disciplinary proceeding;
>
> . . .

[3] Kentucky Rules of Civil Procedure.

[4] Kentucky Revised Statutes.

> until administrative remedies as set forth in the policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted.
>
> . . . .
>
> (3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.
>
> (4) A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies[.]

Inmates must raise all administrative errors to the warden within fifteen days of the disciplinary proceeding. CPP 15.6(F). "[F]ailure to raise an issue before an administrative body precludes a litigant from asserting that issue in an action for judicial review of the agency's action." *O'Dea v. Clark*, 883 S.W.2d 888, 892 (Ky. App. 1994). Therefore, all issues must be raised in the administrative appeal before they may be brought in a subsequent declaratory judgment petition and on appeal. *Houston v. Fletcher*, 193 S.W.3d 276, 278 (Ky. App. 2006).

Bright filed timely appeals of both disciplinary actions. In his appeal of the first disciplinary report, Bright stated: "My Due Process rights were violated . . . when the evidence failed to meet the some evidence standard." Bright then requested that the warden review the case. He admitted that he had attempted to eat outside of his assigned time but asserted that he did not argue with the CO

when he questioned her directive. Similarly, in his appeal of the second disciplinary report, Bright requested that the warden review his case. He alleged neither a due process violation nor failure to meet the "some evidence" standard. In his administrative appeal, Bright professed his innocence by claiming that the witness who testified at not having heard Bright's explicit comment was closer to him than were the other two witnesses that claimed to have heard him. He asserted that he had no motive for cursing at the people named in his statement.

In his declaratory judgment petition and appeal brief, Bright asserts several counts, all of which he failed to bring up during the administrative process. First, Bright contends he was denied the right to present exculpatory evidence when the adjustment officer coerced him into not calling a witness through threat of additional disciplinary actions. Second, Bright asserts he was denied the right to consult with his legal aid twenty-four hours prior to the adjustment hearings for both disciplinary reports. Third, he contends that he was denied a fair adjustment procedure because he did not receive a copy of one of the witness reports of the incident resulting in his second disciplinary report. Finally, Bright alleges that he was denied the right to review the video recording of the incident leading to the second disciplinary report because the adjustment officer reviewed the footage and considered it in his decision without providing him a copy. However, Bright cannot raise issues on appeal which were not timely or properly raised previously

in the administrative proceedings. *Houston,* 193 S.W.3d at 278. Therefore, the trial court did not err in dismissing these claims for failure to exhaust administrative remedies.

On his two remaining claims, Bright argues that the trial court abused its discretion in dismissing his action after finding that prison officials had not violated his due process rights. He also claims error in the court's finding that the evidence presented was sufficient under the "some evidence" standard. In support, Bright advances two arguments on appeal. First, he argues that the evidence on his disciplinary action involving his interference with an employee's performance of her duty did not meet the "some evidence" standard for prison disciplinary actions. Second, Bright claims he did not use explicit language at the security window and that he was found guilty in violation of his due process rights. Bright contends that his petition for declaration of rights stated a claim on which relief could be granted and that, therefore, the trial court's summary dismissal was incorrect.

Having reviewed the record, we can find no error. Prison disciplinary actions require only "some evidence" of guilt. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985).[5] "[C]ourts only *review* the decisions of the [adjustment officer] and prison officials are afforded broad *discretion*." *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky. App.

[5] This Court adopted the federal standard in *Hill* via a *per curiam* opinion in *Smith v. O'Dea*, 939 S.W.2d 353, 356-57 (Ky. App. 1997).

2003); *Gilhaus v. Wilson*, 734 S.W.2d 808, 810 (Ky. App. 1987). This Court must affirm if there is "some evidence" supporting the charge. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774. "The primary inquiry [in a prison disciplinary action] is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board[,]" and "[e]ven meager evidence will suffice." *Ramirez v. Nietzel*, 424 S.W.3d 911, 917 (Ky. 2014) (footnotes and internal quotation marks omitted). "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.

Because prison disciplinary proceedings are not equivalent to criminal prosecutions, "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). "Minimal due process is all that is required regarding a person detained in lawful custody." *McMillen v. Kentucky Dep't of Corr.*, 233 S.W.3d 203, 205 (Ky. App. 2007). The requirements of due process are satisfied if the standard of "some evidence" is met. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774. Even when the evidence presented requires making a reasonable inference, it is deemed to be sufficient to meet the "some evidence" standard. *Smith*, 939 S.W.2d at 357.

The record reveals that the prison officials followed required administrative processes in all of Bright's disciplinary reports, each of which was supported by some evidence. After the first incident, prison officials considered the CO's report before concluding that Bright had interfered in the performance of the CO's duties. Bright admitted that he attempted to eat breakfast at the wrong time. Thus, the trial court reasonably inferred from these findings that Bright's actions had interfered with the CO's duties. The second incident involving Bright's abusive, disrespectful, and obscene statements directed toward a non-inmate is supported by the reports of two witnesses who heard Bright's comment. The video footage provided more evidence of this CPP violation. The adjustment officer did not find Bright's claims of innocence convincing. All findings were properly documented in the disciplinary reports.

Electing to believe one set of facts over another is not the same as refusing to consider all evidence presented. The adjustment officer's findings are not insufficient solely because conflicting evidence was presented. Bright was unable to prove a valid reason for his actions. The facts supported the adjustment officer's finding of guilt on each disciplinary report. Thus, the findings were sufficient, and the requirements of minimum due process were satisfied. There is "some evidence" in the record to support the adjustment officer's findings on each of Bright's disciplinary actions.

We affirm the Franklin Circuit Court's order denying Bright's prison disciplinary petition.

ALL CONCUR.

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