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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2017-CA-001169-MR

TAYLOR C. HUDSON — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 17-CI-01843

TIFFANY RATLIFF, WARDEN OF
BLACKBURN CORRECTIONAL COMPLEX — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR AND K. THOMPSON, JUDGES; HENRY, SPECIAL JUDGE.[1]

HENRY, SPECIAL JUDGE: Taylor C. Hudson, *pro se*, appeals from the Fayette Circuit Court's dismissal of his declaratory judgment action requesting review of prison disciplinary proceedings. We affirm.

[1]Special Judge Michael L. Henry sitting by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Hudson contests a disciplinary report he received while housed at Blackburn Correctional Complex. The violation occurred when the results from a reasonable suspicion urinalysis drug screen were positive for a substance found in cigarettes and tobacco products.[2] The disciplinary report indicated Hudson did not take any medications that would result in a false positive result. Hudson denied all use of tobacco products and maintained ignorance of how the positive result had occurred. The adjustment officer subsequently found Hudson guilty of use or possession of tobacco products in a minimum custody facility.[3] Hudson received a penalty of forfeiture of thirty days of good time credit. Hudson appealed the disciplinary report to Warden Tiffany Ratliff (Warden Ratliff), who upheld the decision, despite Hudson's newly-raised defense of merely having been in the presence of other smokers. He professed his innocence and requested the incident video recording, which provided the reasonable suspicion leading to the drug screening.

Hudson promptly petitioned the Fayette Circuit Court for a declaration of rights, alleging a failure of corrections staff to follow appropriate procedure and a violation of his due process and equal protection rights.

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[2] The urine sample tested positive for cotinine, which is a tobacco byproduct.

[3] 501 Kentucky Administrative Regulation ("KAR") 6:020, Kentucky Department of Corrections Policies and Procedures ("CPP") 15.2(II)(C)(3)(25).

Following Warden Ratliff's motion to dismiss, the trial court summarily dismissed the action pursuant to CR[4] 12.02 for failure to state a claim on which relief could be granted. This appeal followed.

CR 12.02(f) allows a trial court to grant a motion to dismiss for the failure to state a claim on which relief may be granted. A trial court may grant a motion to dismiss when 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. *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). Because this is a determination of a question of law, we review the trial court's ruling on a motion to dismiss *de novo*. *Id.*

Hudson argues the trial court decided incorrectly in dismissing his action after finding prison officials had not violated his due process and equal protection rights. In support of his position, Hudson advances four arguments on appeal. First, Hudson argues the trial court erred in ruling Warden Ratliff was entitled to sovereign immunity. Second, Hudson contends the evidence on his disciplinary action did not meet the "some evidence" standard for prison disciplinary actions. Third, he asserts his due process rights were violated when adjustment officers refused to review the video footage he requested. And, fourth, Hudson maintains the adjustment officers did not follow the applicable

[4] Kentucky Rules of Civil Procedure.

administrative policies and regulations when his hearing was conducted outside the initial seven-day period prescribed by CPP 15.6(II)(D)(1). Hudson contends his petition for declaration of rights stated a claim on which relief could be granted, and therefore, the trial court's summary dismissal was incorrect. Having reviewed the record, and for the following reasons, we discern no error.

First, Hudson contends Warden Ratliff is not entitled to sovereign immunity because he has requested equitable relief. Although sovereign immunity does not apply to individuals *per se*, public officials are protected by *official immunity* when they are sued in lieu of the state agency employing them. *Yanero v. Davis*, 65 S.W.3d 510, 521-22 (Ky. 2001). Here, Hudson named Warden Ratliff in her capacity as warden of the institution wherein he is incarcerated; therefore, any claims against Warden Ratliff as an individual are barred by official immunity. Neither sovereign immunity nor official immunity prevents Hudson from pursuing declaratory relief against the institution itself. However, as we discuss *infra*, his claims cannot succeed.

Second, Hudson disputes the sufficiency of the evidence against him. A trial court is required to review the record to determine whether some evidence supported the disciplinary finding and whether the inmate received notice of the charges, a reasonable opportunity to be heard, and a brief explanation of the adjustment officer's decision. *See Smith v. O'Dea*, 939 S.W.2d 353, 357 (Ky.

App. 1997). Hudson concedes he received notice of the charges and an explanation of the adjustment officer's decision.

We begin with the sufficiency of the evidence against Hudson. 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] "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). Prison disciplinary proceedings are not equivalent to 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). "Minimal due process is all that is required regarding a person detained in lawful custody." *McMillen v. Kentucky Dep't of Corrections*, 233 S.W.3d 203, 205 (Ky. App. 2007). "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. "[C]ourts only review decisions of the [adjustment officer] and

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

prison officials are afforded broad discretion." *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky. App. 2003).

Hudson's argument concerning the testing method and cotinine level in the results is without merit. Hudson complains the testing procedure was a screening test, which did not show the exact level of cotinine in his blood. He uses this reasoning to support his defense of having been subjected to secondhand smoke. 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. "[T]he 'some evidence' standard does not require that the evidence logically preclude any conclusion but the one reached by the hearing officer." *Webb v. Sharp*, 223 S.W.3d 113, 121 (Ky. 2007). Here, the fact of a positive drug screen result supported the adjustment officer's finding of guilt on the 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 Hudson's disciplinary action.

Third, Hudson argues he lacked an opportunity to be heard in the denial of his request for review of video footage. The record reveals adjustment officers followed the required administrative processes in Hudson's disciplinary report, which was supported by some evidence, and were not required to review

video footage. Inmates are afforded "an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in defense" under their due process rights. *Hill*, 472 U.S. at 454, 105 S.Ct. at 2773. However, the record does not support Hudson's allegation of the administrative officer's refusal to review the video record because he did not make a request for its review during the hearing.

Hudson failed to request review until his appeal to the warden and after his initial hearing. Because he did not include his request during his initial hearing, the adjustment officers were not required to review the video under *Ramirez*, 424 S.W.3d at 915 (holding prison officials must review surveillance footage if requested by an inmate in a disciplinary proceeding). As we have previously held, "*Ramirez* only requires such fact-finding on the part of the circuit court following an [adjustment officer's] refusal to consider exculpatory evidence." *Dixon v. Bottom*, 497 S.W.3d 258, 261 (Ky. App. 2016) (internal quotation marks and citation omitted). Hudson's first mention of his secondhand smoke defense and request for a video evidence review did not occur until his appeal to Warden Ratliff. Therefore, Hudson's allegation of a due process violation in the denial of the review of video footage is also meritless.

Finally, Hudson complains the length of time between the alleged violation and the initial hearing exceeded the time specified in the applicable administrative regulations and policies. CPP 15.6(II)(D)(1) states:

> The hearing shall be held within seven (7) working days after the completion of the investigation. A delay beyond this time shall be justified and documented in writing on Part II of the report. This time limitation is to benefit staff and does not constitute a time in which the inmate has a right to a hearing.

The Supreme Court of Kentucky has held that, "[p]rison regulations, even those which include mandatory language such as 'shall,' do not automatically confer on the prisoner an added procedural due process protection." *White v. Boards-Bey*, 426 S.W.3d 569, 575 (Ky. 2014). Additionally, "a prison regulation primarily designed to guide correctional officials in the administration of a prison . . . [is] not designed to confer rights on inmates." *Sandin v. Conner*, 515 U.S. 472, 481-82, 115 S.Ct. 2293, 2299, 132 L.Ed.2d 418 (1995). The adjustment officers followed this regulation by explaining the reason behind the delay in the hearing – the staff shortage – and did not deny Hudson any rights by so doing.

For the foregoing reasons, we affirm the Fayette Circuit Court's order denying Hudson's prison disciplinary petition.

TAYLOR AND K. THOMPSON, JUDGES, CONCUR IN THE RESULT ONLY.

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