

RENDERED: MARCH 22, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001905-MR

KESHAWN JOHNSON

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 17-C1-00448

JANET CONOVER, WARDEN;
KENTUCKY CORRECTIONAL
INSTITUTE FOR WOMEN; AND
JAMES IRWIN IN HIS OFFICIAL
CAPACITY AS ACTING DIRECTOR
OF THE KENTUCKY DEPARTMENT
OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

CLAYTON, CHIEF JUDGE: Keshawn Johnson appeals from an order of the

Shelby Circuit Court denying her *pro se* petition for declaration of rights pursuant

to Kentucky Revised Statutes (KRS) 418.040. Johnson, an inmate at the Kentucky Correctional Institute for Women, contends that her due process rights were violated when she was disciplined for causing serious physical injury to another inmate.

On February 14, 2017, two officers at the correctional institute heard a verbal altercation occurring in another area of the prison. When they went to the scene, they saw Johnson assaulting a fellow inmate, Shakela Sanders. After Johnson was placed in restraints and taken away, another inmate, Warrenisha King, told the officers she had also been assaulted by Johnson. King was examined by medical staff and photographed. On the following day, she had to be taken from the prison to the hospital to receive treatment for the assault. Following an investigation, Johnson was charged with physical action resulting in death or serious physical injury of an inmate.

At the disciplinary hearing, Johnson testified she could not remember anything about the assault because she had blacked out. She stated she had been under a lot of stress and had previously spoken with Lieutenant Barnett who was going to put in a mental health request for her. Lieutenant Barnett was not allowed to testify, however, because he was not on the prison grounds when the incident took place. Psychologist Rachel Buehner, a witness called by Johnson, testified that Johnson had not been seen by mental health staff since September 2016.

Johnson's legal aide stated that there was nothing in the disciplinary report or anything on camera that showed Johnson striking King and reiterated that Johnson had been trying to seek mental health help.

The hearing officer held there was sufficient evidence to find Johnson guilty of the charged offense and assessed a penalty of thirty days RHU time (disciplinary segregation), restitution for the cost of the officer's time and mileage for taking the victim King to the hospital, and the forfeiture of one hundred and nine days of good time credit. The Warden concurred with the action taken, stating in her review: "[S]erious physical injury' means an injury requiring more than basic first aid. Inmate King was transported to the hospital after being assaulted by you [Johnson]. Due Process appears to be in order and the decision is supported by the evidence."

Johnson filed a petition for declaration of rights in Shelby Circuit Court which was dismissed upon the court finding (1) that the prison disciplinary proceedings complied with the standards of due process and (2) there was some evidence in the record to support the disciplinary finding. This *pro se* appeal by Johnson followed.

Our standard of review requires us to recognize that "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Webb v. Sharp*, 223

S.W.3d 113, 117 (Ky. 2007), *quoting Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). The minimal due process requirements in a prison disciplinary hearing include: “(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 his [or her] defense; and (3) a written statement by the factfinder . . . of the evidence relied on and the reasons for the disciplinary action.” *Id.* at 117-18 (internal citations omitted).

Prison officials are afforded broad discretion in regard to the discipline of prisoners. *Yates v. Fletcher*, 120 S.W.3d 728 (Ky. App. 2003). An appellate court must affirm the findings of a prison disciplinary committee if there is “some evidence” supporting the charge. *Id.* at 731.

On appeal, Johnson is unable to deny she engaged in physical action against King but argues the finding of serious physical injury was not supported by “some evidence.” The evidence relied upon by the hearing officer consisted primarily of King’s statement that she was assaulted by Johnson, and the fact that King was ultimately transported to the hospital after the assault. Johnson questions the sufficiency of this evidence, pointing out that the hearing record contained no summary of the injuries suffered by King or the actual type of treatment, if any, she received at the hospital.

Johnson's argument is premised on a definition of serious physical injury compiled from Black's Law Dictionary (10th ed. 2014), in which "serious" is defined in this context as "dangerous, potentially resulting in death or other severe consequences"; "bodily injury" as "[P]hysical damage to a person's body"; and "bodily harm" as "[P]hysical pain, illness or impairment of the body." But "serious physical injury" is a term specifically defined in Kentucky Corrections Policies and Procedures (CPP) 15.2(I) simply as "an injury requiring more than basic first aid." King was assaulted by Johnson and was subsequently taken to the hospital because prison personnel believed her injuries required more than the basic first aid they could render on site. These facts constitute reliable evidence supporting the hearing officer's finding. Eye witnesses or camera footage were not necessary to determine that Johnson seriously injured another inmate under the relevant definition found in CPP 15.2.

Johnson also alleges several procedural violations. She claims she was not provided with attachments such as pictures and occurrence reports prior to her adjustment hearing, in violation of CPP 15.6(II)(C)(3)(c). She does refer to a report, obtained after the adjustment hearing by means of an Open Records request, which states that King was assessed by an LPN, presumably at the hospital, who noted "bruising and swelling to her left jaw and cheek area" and stated that King was allowed to leave. The report is not in the record before us, nor

is there any indication the report was relied upon in making the disciplinary determination. Johnson does not explain how her case may have been harmed by her lack of access to this report or to any other materials she references.

Johnson also requested a copy of her adjustment hearing tape, claiming it could confirm that the written record is inaccurate. She did not receive the tape because the record was not on file, a violation of CPP 15.6(II)(B)(2) which requires the institution to preserve the audio tape recording of the hearing for two years from the date of the Warden's review. The failure to follow this procedural directive is not, however, a due process violation warranting reversal of the disposition of the case. There is no authority that a CPP regulation creates an enforceable right. "There is no constitutional violation when state actors fail to meet their own regulations, so long as the minimum constitutional requirements have been met." *Black v. Parke*, 4 F.3d 442, 448 (6th Cir. 1993). Minimum constitutional requirements, as set forth earlier in this opinion, were met in this case. *See Webb v. Sharp, supra*. It is not disputed that Johnson received advance written notice of the disciplinary charges against her, was provided the opportunity to call witnesses and received a written statement setting forth the evidence relied upon by the hearing officer in making the disciplinary determination.

In an additional argument, Johnson claims she requested a summary of the restitution she owes but received a response stating, "no restitution has been

charged to you[.]” She wishes to know why no restitution is to be paid. This issue appears to be moot because Johnson is not disadvantaged in any way by this decision. Any analysis on our part regarding the reason for the apparent decision not to charge restitution would be purely speculative.

For the foregoing reasons, the Shelby Circuit Court’s order denying Johnson’s petition for declaration of rights is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Keshawn Johnson, *pro se*
Pewee Valley, Kentucky

BRIEF FOR APPELLEE:

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