

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000196-MR

TYRONE SYKES

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. TRAVIS, JUDGE
ACTION NO. 17-CI-01571

TIFFANY RATLIFF

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: GOODWINE, JONES AND NICKELL, JUDGES.

NICKELL, JUDGE: Tyrone Sykes, *pro se*, appeals from the Fayette Circuit Court's dismissal of his declaratory judgment action requesting review of prison disciplinary proceedings. Following a careful review, we affirm.

Sykes contests two disciplinary reports he received while housed at Blackburn Correctional Complex. Both occurred during a search of his cell when

correctional officers discovered eyewear frames etched with gang paraphernalia¹ and a “green, leafy substance” that tested positive for synthetic cannabinoids in Sykes’ locked locker. Sykes was given written copies of the disciplinary reports, assigned a legal aide, and testified at the hearing. The adjustment officer subsequently found Sykes guilty of possession of or displaying gang paraphernalia² and possession or promoting of dangerous contraband.³ Sykes was penalized with the loss of 270 days restorable good time credit. Sykes appealed the disciplinary reports to the warden, who upheld the decisions.

Sykes promptly petitioned the Fayette Circuit Court for a declaration of rights, alleging failure of Corrections staff to follow appropriate procedure and violation of his due process and equal protection rights. The trial court dismissed the action pursuant to CR⁴ 12.02 for failure to state a claim on which relief could be granted. Sykes moved the court to amend its judgment pursuant to CR 52, 59, and 60.02(d) and (e). In its order denying the motion, the trial court found “some evidence” had been presented at the adjustment hearing to support a finding of

¹ The inscription stated, “BANG BANG! OJT300SQUAD.”

² Kentucky Department of Corrections Policies and Procedures (“CPP”) 15.2(2)(C)(5)(9).

³ CPP 15.2(2)(C)(6)(3).

⁴ Kentucky Rules of Civil Procedure.

guilt, and the hearing had satisfied all due process and equal protection requirements for a prison disciplinary proceeding. This appeal followed.

As an initial matter, in contravention of CR 76.12(4)(c)(v), Sykes does not state how he preserved any of his arguments in the trial court.

CR 76.12(4)(c)[(v)] in providing that an appellate brief's contents must contain at the beginning of each argument a reference to the record showing whether the issue was preserved for review and in what manner emphasizes the importance of the firmly established rule that the trial court should first be given the opportunity to rule on questions before they are available for appellate review. It is only to avert a manifest injustice that this court will entertain an argument not presented to the trial court. (citations omitted).

Elwell v. Stone, 799 S.W.2d 46, 48 (Ky. App. 1990) (quoting *Massie v. Persson*, 729 S.W.2d 448, 452 (Ky. App. 1987)). We require a statement of preservation

so that we, the reviewing Court, can be confident the issue was properly presented to the trial court and therefore, is appropriate for our consideration. It also has a bearing on whether we employ the recognized standard of review, or in the case of an unpreserved error, whether palpable error review is being requested and may be granted.

Oakley v. Oakley, 391 S.W.3d 377, 380 (Ky. App. 2012).

Further, in contravention of CR 76.12(4)(c)(iv) and (v), which require ample references to the trial court record supporting each argument, neither of Sykes' briefs contain any such references to the record in support of his arguments. This clearly does not constitute ample citation to the record.

Additionally, Sykes' brief does not comply with CR 76.12(4)(c)(vii) which requires an appendix containing the item being appealed. Although Sykes included a page labeled "Appendix" he attached nothing to his initial brief. Sykes attached to his reply brief copies of his disciplinary reports and pictures of evidence/property tags. He did not attach the trial court order from which this case clearly flows to either of his briefs.

Although noncompliance with CR 76.12 is not automatically fatal, we would be well within our discretion to strike his brief or dismiss the appeal for Sykes' failure to comply. *Elwell*, 799 S.W.2d 46. "While *pro se* litigants are sometimes held to less stringent standards than lawyers in drafting formal pleadings, see *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), Kentucky courts still require *pro se* litigants to follow the Kentucky Rules of Civil Procedure." *Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky. App. 2009). Due to our resolution of this action, we have chosen not to penalize Sykes.

Sykes argues the trial court abused its discretion in dismissing his action after finding prison officials had not violated his due process rights. In support of his position, Sykes advances various intertwined arguments. At the heart of Sykes' argument is his belief the evidence introduced as confiscated property did not meet the "some evidence" standard applicable to prison disciplinary actions. Sykes also contends his petition for a declaration of rights

stated a claim on which relief could be granted, and therefore, the trial court’s summary dismissal was incorrect.⁵ Having reviewed the record, we discern 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). “[C]ourts only *review* decisions of the [adjustment officer] and prison officials are afforded broad *discretion*.” *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky. App. 2003). 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

⁵ In his argument, Sykes alleges fraud in the proceedings filed in the Fayette Circuit Court. First, Sykes claims Appellees did not respond within twenty days; however, the record reflects Ratliff—the only defendant on which service of process was documented in the record—was served summons on December 1, 2017, and responded with the motion to dismiss filed on December 21, 2017. Because Sykes’ argument on this point is without merit, no discussion of it is warranted. Second, Sykes alleges fraud because the order dismissing the action was entered only six days after the motion was filed. Sykes believes he was entitled to amend his petition or respond to the motion. Amendment of a petition after a response has been filed may be done with permission of the court but such request need not be granted if the amendment would be futile, as would be the case here had Sykes moved the trial court for leave to amend his pleading. CR 15.01. Similarly, no response to a motion to dismiss under CR 12.02 is required. As such, this argument is also without merit and does not warrant further discussion.

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.

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). The requirements of due process are satisfied if the “some evidence” standard is met. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774.

The record reveals prison officials followed the required administrative processes in both of Sykes’ disciplinary reports, each of which was supported by some evidence. After the glasses were confiscated in the first violation, prison officials considered the contents of the etching before concluding they were gang-related. The report indicated Sgt. Courtney Tudor conferred with Sgt. Marika Burns to determine whether the etching constituted gang paraphernalia and subsequently established some evidence of this CPP violation. The second violation, involving Sykes’ possession of dangerous contraband, was documented in a similar fashion with “green leafy substance” being found in Sykes’ locked locker in a CD case inside a hollowed-out cigar as well as in wadded papers found

in a deodorant cap. The report states the substance tested positive for synthetic cannabinoids. This constitutes some evidence as well. The adjustment officer did not find Sykes' claims he always leaves his locker unlocked and has no idea where the "spice" came from convincing. All findings were properly documented in the disciplinary reports.

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, congruent with *Hill*, to support the adjustment officer's findings on each of Sykes' disciplinary actions.

For the foregoing reasons, we affirm the Fayette Circuit Court's order dismissing Sykes' declaratory judgment action.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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