

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000457-MR

WOODBURN SCHLICHT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP SHEPHERD, JUDGE
ACTION NO. 17-CI-00925

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, KRAMER, AND L. THOMPSON, JUDGES.

KRAMER, JUDGE: Woodburn Schlicht, *pro se*, appeals from the order of the Franklin Circuit Court dismissing his petition for declaratory judgment. After careful review of the record and applicable law, we affirm.¹

¹ Due to errors in the Clerk's office, rendition of this opinion was delayed.

While an inmate at Blackburn Correctional Complex (“BCC”),² Schlicht was subjected to a prison disciplinary action for “pursuing/having a non-correctional relationship with a non-inmate,” a violation under Corrections Policies and Procedures 15.2 Category IV (21). The disciplinary action was instituted based on video security footage, recording Schlicht meeting with Loretta Whitaker, a certified medical assistant, outside of the medical building on several occasions.

At the adjustment hearing, Schlicht admitted to waiting on Whitaker to speak with her. Schlicht explained that he was speaking to Whitaker about a dog that he had trained from the K-9 program at BBC, that Whitaker later adopted. He further explained that he did not intend to be inappropriate, but only wanted to help with training the dog. Whitaker confirmed Schlicht’s testimony regarding the contents of their conversations through a written statement she submitted. It was undisputed that Schlicht did not go through appropriate procedures to meet with or speak to Whitaker. Ultimately, the adjustment officer found Schlicht guilty. Schlicht was assessed a penalty of loss of sixty days of good time credit, with thirty days suspended for 180 days if no further violations occurred. Schlicht appealed to the Warden, who affirmed the adjustment officer’s decision.

² Schlicht was transferred to Bell County Forestry Camp on August 1, 2018 and remains on supervised release. Hence, this appeal is not mooted by his discharge from BCC.

Schlicht petitioned the Franklin Circuit Court for a declaration of rights. The Department of Corrections moved for dismissal, which the circuit granted. This appeal followed.

On appeal, Schlicht's main contention is that the "some evidence" standard was not met in this case to support finding him guilty of committing the violation. Regarding the "some evidence" standard, the Supreme Court of Kentucky held that

[p]rison disciplinary proceedings, such as the Adjustment Committee hearing in the case before us, are not criminal prosecutions. Rather, these proceedings are considered administrative proceedings. Consequently, prisoners subject to disciplinary proceedings do not enjoy the full panoply of due process protections. Prisoners do, however, retain a minimal right to due process subject to the many limitations inherent in the penal system. In order to comply with the minimum requirements of procedural due process, an inmate cannot be deprived of a protected liberty interest unless he receives: (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 defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. Additionally, due process requires that there be "some evidence" in the record to support the disciplinary board's decision. This standard merely requires some basis in the record in which the reviewing court can deduce the reasons for the disciplinary board's finding. Ascertaining whether this standard is satisfied does not require [a reviewing court's] examination of the entire record, independent assessment of the credibility of witnesses, or weighing of

the evidence.

Haney v. Thomas, 406 S.W.3d 823, 825–26 (Ky. 2013) (internal quotation marks and citations omitted).

Schlicht argues that there was insufficient evidence to meet the “some evidence” standard that was required to find him guilty of this violation. We disagree.

Schlicht admits that he had the conversations with Whitaker and that he did not go use BBC’s procedures to meet with Whitaker. Moreover, the meetings were recorded on security cameras. He only argues that this relationship should not be punishable because the conversations pertained to the dog he had trained, which Whitaker adopted and with which Whitaker was having difficulties. Regardless of the content of the conversations, they were clearly a violation of BBC’s rules, as determined by the Warden. Therefore, there is “some evidence” to support the disciplinary action against Schlicht.

Schlicht now argues, for the first time, that the BCC staff improperly cited the rule on which they based the violation on. Corrections Policies and Procedures 15.2 Category IV (21) fully describes the violations as, “[p]ursuing or developing a relationship that is unrelated to correctional activities with a non-inmate[.]” The disciplinary forms describe this violation as, “pursuing/having a non-correction relationship w/non-inmate.” Schlicht argues that because this

violation was not quoted precisely he should not be able to be convicted of it. However, this issue has not been presented below. The Supreme Court of Kentucky has previously stated that, “the Court of Appeals is without authority to review issues not raised in or decided by the trial court.” *Regional Jail Authority v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989). Therefore, this issue is not reviewable by this Court. Regardless, even if we were to review it, there was no error. There is not a meaningful distinction between the two descriptions of the violation, and there is undisputed evidence supporting either description.

For the reasons stated above, the Franklin Circuit Court’s order is affirmed.

ALL CONCUR.

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