

RENDERED: DECEMBER 13, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001034-MR

BRETT MARTIN

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE ERNESTO M. SCORSONE, JUDGE  
ACTION NO. 17-CI-02470

TIFFANY RATLIFF

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, NICKELL,<sup>1</sup> AND L. THOMPSON, JUDGES.

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<sup>1</sup> Judge C. Shea Nickell concurred in this opinion prior to being sworn in as a Justice with the Supreme Court of Kentucky. Release of this opinion was delayed by administrative handling.

ACREE, JUDGE: Appellant, Brett Martin, appeals the May 22, 2018, order of the Fayette Circuit Court dismissing his declaratory judgment action for failure to state a claim upon which relief can be granted. After careful review, we affirm.

### **FACTS AND PROCEDURE**

While incarcerated at Blackburn Correctional Complex, Martin was charged with possession of or promoting dangerous contraband.

On April 17, 2017, Internal Affairs Sgt. Marika Burns stated she became aware of what she characterized as “suspicious [sic] phone calls” between Martin and his grandmother, Sharon Broaddus. The subject matter of the phone calls was mostly general, but during the course of a conversation on April 21, 2017, Broaddus and Martin referred to items being placed beneath cones. (Record (R.) 27). On April 22, 2017, over the course of two phone calls, Broaddus and Martin discussed the “Horse Park” and checking to ensure items were delivered.  
*Id.*

On April 30, 2017, a mounted police officer cleaning the guard shack at the entrance to Campground Road at the Kentucky Horse Park located a pound of Kentucky’s Best pipe tobacco hidden under a traffic cone. (R. 24).

Sgt. Burns reviewed the phone calls between Martin and Broaddus and included them as evidence in her disciplinary report. Prior to the hearing, Martin was given written notice of the disciplinary charges against him. He was

also given a copy of the investigative report, advised of his right to call witnesses, and was provided the option to have an inmate legal aid present at his hearing. Martin declined to call any witnesses and declined inmate legal aid.

On May 5, 2017, a disciplinary hearing was held at Blackburn concerning the discovered contraband and Martin's phone calls. The hearing officer determined Martin was the individual who orchestrated the sequence leading to the contraband being placed under the traffic cone. Martin was found guilty of violating CPP<sup>2</sup> 15.2(II)(C) Category VI-03, prohibiting possession or promotion of dangerous contraband. He was given disciplinary segregation for thirty days, suspension for 180 days, and loss of good time credit of 180 days.

On August 23, 2017, Martin filed a petition for declaration of rights with the Fayette Circuit Court. On May 22, 2018, the circuit court granted the motion to dismiss Martin's petition. Martin appealed.

### **STANDARD OF REVIEW**

Prison disciplinary proceedings are administrative, rather than criminal, in nature. Although inmates retain rights under the Due Process Clause of the United States and Kentucky Constitutions, a defendant in a prison disciplinary proceeding is not entitled to "the full panoply of rights due a defendant" in a criminal proceeding. *See Wolff v. McDonnell*, 418 U.S. 539, 556,

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<sup>2</sup> Kentucky Department of Corrections Policies and Procedures.

94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974); *Smith v. O’Dea*, 939 S.W.2d 353, 357-58 (Ky. App. 1997). In general, the minimal due process requirements in a prison disciplinary hearing include: (1) advance written notice of the claimed violation; (2) an opportunity to call witnesses and present a defense “when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals”; and (3) a written statement by the factfinder detailing the evidence relied on and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 563-67, 94 S.Ct. at 2978-80; *Webb v. Sharp*, 223 S.W.3d 113, 117-18 (Ky. 2007).

Further, these due process requirements are met “if some evidence supports the decision by the prison disciplinary board[.]” *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985).

### **ANALYSIS**

Martin argues the circuit court erred in concluding the issue was whether he received due process, when the actual issue was whether there was some reliable evidence to support the offense with which he was charged. We conclude both that Martin received due process and that there was some evidence to support a finding he committed the offense with which he was charged.

Here, the hearing officer found Martin violated the inchoate version of the contraband offense. An inchoate offense does not require completion of all

steps of the underlying offense. *See, e.g., Smith*, 939 S.W.2d at 357. The hearing officer reviewed the requirements of CPP 15.2(II)(E) and found Martin guilty of violating the inchoate offense, relying primarily on Martin's telephone conversation(s) with his grandmother to link him to the contraband found by the officer. The applicable Department of Corrections policy, CPP 15.2(II)(E), states:

E. Inchoate Violations

1. A person may be found to have committed the violation listed in this policy if he:

- a. Attempts to commit the violation;
- b. Solicits another or others to commit the violation;
- c. Conspires with another or others to commit the violation;
- d. Aids the action of another or others in committing the violation.

The circuit court reviewed the hearing officer's actions and made the following findings:

Petitioner received Part I of the Disciplinary Report Form advising him of the charge against him. The Petitioner signed this report form, which informed him of the charges, allowed him a chance to gather facts in his defense, and to clarify the exact charges. Moreover, the disciplinary committee is required to provide 24-hours timely notice. The Petitioner, however, waived this prerequisite. Petitioner was also given an opportunity to present evidence and witnesses, but he neither presented any evidence nor called any witnesses. Additionally,

after the hearing, Petitioner was given Part II of the Disciplinary Report Form, containing the conclusions of the fact-finder and a statement of the evidence relied upon in reaching that conclusion, as well as the reasons why the disciplinary action requirements were met. Finally, Petitioner's telephone conversations with his grandmother supported the finding that the Petitioner committed the inchoate violation of Possession of or Promoting Dangerous Contraband. . . . All four requirements were found by the fact-finder in this case based on Petitioner's telephone conversations with his grandmother. Thus, the disciplinary board met its burden of establishing some evidence upon which to base its conclusion.

(R. 68-69).

After reviewing the May 22, 2018, order, we find that Martin was afforded every due process right available to him as an inmate. He was provided: an advance written notice of the charges; an opportunity to call witnesses and present a defense; and a written statement by the factfinder detailing the evidence relied upon and the basis of the result. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774.

We agree with the circuit court; the hearing officer's review of Martin's case was proper, the findings were sufficient, and the requirements of minimum due process were satisfied. Given the limited authority to review cases such as these, nothing more need be considered.

Finally, Martin argues impropriety in maintaining a chain of custody regarding the tobacco evidence. He erroneously believes this argument properly challenges sufficiency of the evidence used to convict him. We disagree. Even

without the physical evidence of the contraband, the officer's statement of finding the tobacco would suffice under the "some evidence" standard.

**CONCLUSION**

Based on the foregoing analysis, we affirm the May 22, 2018, order of the Fayette Circuit Court dismissing Martin's petition for a declaration of rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brett Martin, *pro se*  
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BRIEF FOR APPELLEE:

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