

RENDERED: AUGUST 16, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001633-MR

ANDRE FANT

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE C.A. WOODALL, III, JUDGE
ACTION NO. 18-CI-00036

KENTUCKY DEPARTMENT
OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND NICKELL, JUDGES.

NICKELL, JUDGE: Andre Fant, *pro se*, appeals from the Lyon Circuit Court's dismissal of his declaratory judgment action requesting review of a prison disciplinary proceeding. Following a careful review, we affirm.

Fant was an inmate at Kentucky State Penitentiary on June 29, 2017.

A major disturbance occurred resulting in injury to several correctional officers

and a disruption of normal operations of the prison. Fant precipitated the events of the day when he assaulted Correctional Officer (“CO”) James Corley, sprayed CO Lisa Crick with pepper spray dropped by another officer, and kicked CO Jeffery Miller in the head while the officer was attempting to subdue another inmate. After an intensive investigation was completed, Fant was subject to three separate disciplinary charges of Category VII, Item 4, Physical Action Resulting in the Death or Injury of an Employee or Non-Inmate. Fant, along with other inmates involved in the disturbance, was also charged with rioting or inciting a riot. He was provided copies of the charges and investigative reports and was provided an inmate legal aide.

Two hearings were conducted before the prison adjustment committee regarding the charges. Fant did not deny he engaged in the assaults but vehemently challenged the riot charge. He also sought to justify his actions by asserting he had been subject to threats and use of excessive force by various CO’s and attempted to introduce testimony unrelated to the charges pending before the adjustment committee. Fant was found guilty of all charged offenses. Punishment was set at thirty days of restricted housing and loss of 1,460 days of non-restorable good time credit on each charge. Fant appealed the convictions and penalty to the warden who denied relief.

Fant promptly petitioned the Lyon Circuit Court for a declaration of rights, alleging a failure of Corrections staff to follow appropriate Kentucky Department of Corrections Policies and Procedures (CPP) and violations of his state and federal constitutional due process and equal protection rights. The trial court dismissed the action pursuant to CR¹ 12.02 for failure to state a claim upon which relief could be granted. In its order, the trial court found sufficient evidence had been presented at the adjustment hearing to support a finding of guilt and further, the hearing had satisfied all due process and equal protection requirements for a prison disciplinary matter. This appeal followed.

Fant presents substantially the same arguments to this Court as he made below and argues the trial court abused its discretion in dismissing his action after failing to find his due process rights were violated. He further asserts the trial court erred in failing to convene an evidentiary hearing to address several of his allegations of violations of his rights. Finally, Fant argues the “some evidence” standard was not met. Having reviewed the record, we discern no error and affirm.

It is the duty of prison officials to determine guilt or innocence in prison disciplinary proceedings. Courts are charged only with review of the decisions of the adjustment officer and prison officials are afforded broad

¹ Kentucky Rules of Civil Procedure.

discretion. *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky. App. 2003); *Gilhaus v. Wilson*, 734 S.W.2d 808, 810 (Ky. App. 1987). This Court must affirm if there is “some evidence” supporting the charge. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). See also *Smith v. O’Dea*, 939 S.W.2d 353 (Ky. App. 1997) (adoption by Kentucky courts of the federal standard). “[T]he relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary [officer].” *Hill*, 472 U.S. at 455-56, 105 S.Ct. at 2774. Even “meager” evidence has been found to meet this burden. *Id.*, 472 U.S. at 457, 105 S.Ct. at 2775. “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.” *Id.*, 472 U.S. at 455, 105 S.Ct. at 2774.

Prison discipline 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 Dept. of Corrections*, 233 S.W.3d 203, 205 (Ky. App. 2007). “Prisoners claiming a due process violation under the Fourteenth Amendment must demonstrate that they have been deprived of a protected liberty or property interest by arbitrary governmental

action. Such a liberty interest can arise from the Constitution or from state statutes, policies and practices.” *Williams v. Bass*, 63 F.3d 483, 485 (6th Cir. 1995) (citing *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 868-69, 74 L.Ed.2d 675 (1983)). 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.

Fant asserts he was entitled to an evidentiary hearing before the trial court to challenge multiple actions or inactions by the adjustment committee which he claims were inappropriate and resulted in violations of his constitutional rights. In reviewing prison disciplinary actions, a circuit court sits as an appellate court where its review is limited to the record developed during the administrative proceeding. *Smith*, 939 S.W.2d at 355-56. “The court seeks not to form its own judgment, but, with due deference, to ensure that the agency’s judgment comports with the legal restrictions applicable to it.” *Id.* at 355 (citing *American Beauty Homes Corp. v. Louisville & Jefferson County Planning and Zoning Comm’n.*, 379 S.W.2d 450 (Ky. 1964)). Thus, the trial court was not required to convene a *de novo* evidentiary hearing on Fant’s assertions. Although Fant strongly believes he has been wronged by the disciplinary process, we discern no error and Fant’s multiple claims to the contrary are without merit.

Finally, Fant alleges the evidence presented was insufficient to support conviction of the charged infractions. We disagree. The adjustment

committee reviewed the record before it, including testimony from the various victims of Fant's assaults, and the written summaries of events contained in the investigative reports. Although Fant maintains his innocence, evidence to the contrary was presented on each of the charged offenses. The testimony received by the adjustment committee supported their findings of guilt. Thus, the findings were sufficient, and the requirements of minimum due process were satisfied. Given our limited ability to review cases such as these, nothing more need be considered.

For the foregoing reasons, the judgment of the Lyon Circuit Court is
AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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