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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000870-MR

AARON CAMPBELL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 19-CI-00008

KEVIN MAZZA

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, KRAMER, AND TAYLOR, JUDGES.

JONES, JUDGE: Aaron Campbell, an inmate in the custody of the Kentucky Department of Corrections at Eastern Kentucky Correctional Complex (EKCC), appeals from the Franklin Circuit Court's order dismissing his petition for declaration of rights challenging adjustment committee disciplinary findings that

he committed two acts of “possession or promoting dangerous contraband”¹ in violation of CPP 15.2(VI-03). Upon review, we affirm.

While incarcerated at Green River Correctional Complex (GRCC), Campbell was charged with two separate acts of “possession or promoting dangerous contraband.” One charge was for possession of a soda can that he had altered into a container with a secret storage compartment by making a false top and gluing an empty cooking spice bottle inside. The other stemmed from an Internal Affairs investigation into use of JPay email messages and Securus telephone calls by Campbell and two other inmates to organize the sale and distribution of illegal drugs with individuals outside of GRCC.

Separate disciplinary adjustment proceedings were held on each charge. Campbell was found guilty of the charges by the presiding adjustment officer. He was assessed a penalty of thirty days’ disciplinary segregation, sixty days of good time credit forfeited for the first charge and thirty days’ restrictive housing, thirty days of good time credit forfeited for the second.

Campbell appealed each finding of guilt to GRCC Warden Kevin Mazza. Concerning the first offense, Mazza found that the soda can and Campbell’s admission to altering it were introduced as evidence, and “KRS

¹ This is defined in Kentucky Revised Statutes (KRS) 520.010(3) and Kentucky Department of Corrections Policies and Procedures (CPP) 9.6. The CPP is codified in 501 Kentucky Administrative Regulations (KAR) 6:020 Section 1(1).

520.010 defines dangerous contraband as contraband which is capable of use to endanger the safety and security of a detention facility or prison. An altered can with a false top and glued bottle inside meets the definition.” Concerning the second offense, Warden Mazza likewise found that evidence from the investigation demonstrated Campbell’s involvement. Finding no due process violations or other justifications to alter either decision, Warden Mazza denied both appeals.

Campbell then filed a petition for declaration of rights in the Franklin Circuit Court. Therein, he alleged his due process rights under the Fourteenth Amendment of the United States Constitution were violated when there was not “some evidence” in the record to convict him of the charges. He requested that the court dismiss his disciplinary reports, restore his good time credit, and expunge the disciplinary convictions from his record.² Warden Mazza filed a response and moved the court to dismiss Campbell’s petition pursuant to CR³ 12.02(f).

The circuit court found that Campbell had not shown his due process rights were violated. Because the circuit court found that there was “some evidence” in the record to support both findings of guilt against him, the court

² In his petition, Campbell argued the date recorded on the investigating officer’s disciplinary report for the second charge was the date the internal investigation was concluded, rather than the date or dates he had the conversations for which he was be sanctioned. However, this argument is unpersuasive. His involvement in the scheme to transfer drugs and money from the sale of drugs, both within and outside of GRCC, consisted of a series of acts recorded over the course of an investigation into the illicit conduct of Campbell and his cohorts. Using the date and time the investigation was concluded in the incident report was not a due process violation.

³ Kentucky Rules of Civil Procedure.

upheld the adjustment officer's decision, denied Campbell's petition, and granted Warden Mazza's motion to dismiss. This appeal followed.

ANALYSIS

“Prison disciplinary proceedings are not part of a criminal prosecution, 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.” *McMillan v. Ky. Dep't of Corr.*, 233 S.W.3d 203, 205 (Ky. App. 2007) (citation omitted).

In the context of a prison disciplinary proceeding, the state is only required to provide advance written notice of the charges; provide an opportunity to call witnesses and present evidence when those events remain consistent with institutional safety and correctional goals; and to provide a written statement from the fact finder of the evidence relied on and the reasons for the disciplinary action.

Id. (citation omitted).

Concerning the minimum procedural due process required, the Kentucky Supreme Court has held:

Generally speaking, in the context of prison discipline, if “the findings of the prison disciplinary board are supported by some evidence in the record[,]” due process is satisfied. And determining whether “some evidence” is present in the record does not “require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence.”

Even “meager” evidence will suffice. The primary inquiry is “whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” If “some evidence” is satisfied, the fear of arbitrary government action is removed and no due-process violation is found.

Ramirez v. Nietzel, 424 S.W.3d 911, 916-17 (Ky. 2014) (citations omitted).

Thus, “the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary [officer].”

Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 455-56, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985) (citations omitted).

Here, Campbell contends his due process rights were violated by the disciplinary proceedings. However, he does not contest that he received the procedural due process guarantees of *Smith v. O’Dea*, 939 S.W.2d 353, 357 (Ky. App. 1997): (1) advanced written notice of the charges; (2) an opportunity to present evidence and call witnesses before the adjustment committee; and (3) a written statement of the adjustment officer’s and Warden Mazza’s decisions. Rather, he merely argues the evidence presented against him was insufficient to qualify as “some evidence.”

Regarding the first charge, he asserts the evidence was insufficient because a storage container disguised as a soda can is not among the items enumerated in CPP 9.6(I) as “dangerous contraband.” However, as KRS 520.010(3) and CPP 9.6(I) clearly state, the items enumerated therein are

illustrative, non-exhaustive lists of some items considered to be “dangerous contraband.”⁴ Under KRS 520.010(3), “dangerous contraband” is any item “capable of use to endanger the safety or security of a detention facility or persons therein”⁵

Here, Campbell’s makeshift container could be used to hide drugs, weapons, or other dangerous items, thereby undermining the safety and security of GRCC and persons therein. Thus, it was not an abuse of discretion for the adjustment officer to determine that a container used to conceal items from prison authorities is “dangerous contraband.” Likewise, the circuit court did not abuse its discretion in finding the container was “some evidence” to support the adjustment officer’s decision.

⁴ Under KRS 520.010(3), “‘Dangerous contraband’ means contraband which is capable of use to endanger the safety or security of a detention facility or persons therein, including, *but not limited to*,” (emphasis added). CPP 9.6(I) states “‘Dangerous contraband’ is defined by KRS 520.010 and includes items described in subsection II.A below.” CPP 9.6(II)(A)(1) provides examples of some items considered to be “dangerous contraband,” such as “[a]ny gun, firearm, weapon, sharp instrument, knife, unauthorized tool, or any other object which may be used to do bodily harm or facilitate escape.”

⁵ Prison officials have great latitude in determining what constitutes “dangerous contraband.” For illustrative purposes only, other items adjustment officers have properly ruled were “dangerous contraband” in our unpublished opinions include: empty balloons ingested to later be used as drug containers (*Holt v. Cooper*, No. 2006-CA-000765-MR, 2007 WL 491605 (Ky. App. Feb. 16, 2007)); pornographic DVDs (*Adams v. Dept. of Corr.*, No. 2015-CA-000352-MR, 2016 WL 1178580, at *1 (Ky. App. Mar. 25, 2016)) (Adjustment officer determined “DVD’s are considered dangerous contraband because they are used to store data and may be overwritten to store information that could [] threaten the security of the facility.”); and cell phones (*Burdell v. Morgan*, No. 2005-CA-000276-MR, 2006 WL 1045501 (Ky. App. Mar. 31, 2006)).

Concerning the second charge, the circuit court and Warden Mazza noted that, although some of the investigating officer's summaries were inaccurate, the adjustment officer's decision was based upon the actual transcripts of Campbell's phone calls and not on the summaries. The transcripts offer "some evidence" supporting the adjustment officer's decision that Campbell was involved with trafficking drugs and distributing drug money outside of GRCC. Certainly, promoting drug trafficking is an example of "promoting dangerous contraband" under CPP 15.2(VI-03). Thus, the circuit court did not abuse its discretion in denying Campbell's petition.

CONCLUSION

For the foregoing reasons, we affirm the Franklin Circuit Court's order dismissing Campbell's declaration of rights action.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Aaron Campbell, *pro se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Oran S. McFarlan, III
Amy V. Barker
Frankfort, Kentucky