

RENDERED: JANUARY 31, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000398-MR

JESSICA TUCKER

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 18-CI-00309

JANET CONOVER, WARDEN,
KENTUCKY CORRECTIONAL INSTITUTION
FOR WOMEN; AND JAMES ERWIN, COMMISSIONER,
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; CALDWELL AND COMBS, JUDGES.

COMBS, JUDGE: Appellant, Jessica Tucker (Tucker), appeals from an opinion and order of the Shelby Circuit Court dismissing her petition for declaration of rights in which she sought relief from a prison disciplinary proceeding. After our review, we affirm.

The circuit court's February 22, 2019, opinion and order provides a succinct summary of the relevant facts:

Tucker was found guilty of a Category III, (11) Physical Action or Force Against Another Inmate If No Injury Has Occurred, Including Horseplay,^[1] and . . . penalized with 60 days canteen restrictions and the loss of 60 days good time credit. Tucker appealed this decision to [the] Warden . . . who affirmed the decision reached by the Adjustment Officer, and found that all due process requirements had been met. . . .

...

The allegations herein are that a physical altercation occurred on the ballfield between inmate Tucker and inmate Palmer. Tucker argued . . . that she did not fight back, rather she "balled up" and let the other inmate Palmer repeatedly hit her. Tucker waived her right to 24 hour notice prior to her disciplinary hearing and waived witness statements. . . . The Adjustment Officer's Findings provided in pertinent part are as follows:

I reviewed (sic) camera and do see Palmer and Tucker in a physical altercation while on the ball field. I do not see the other inmate involved.

I find inmate guilty of category 3-11 due to reviewing camera and see Tucker and Palmer in a physical altercation on the ball field and issue 60 days GTL and 60 days canteen restriction.

¹ Kentucky Corrections Policies and Procedures (CPP) 15.2(II) Section C, Category III, Item 11, Appellant's brief, Appendix 4.

On July 9, 2018, Tucker filed a petition for declaration of rights pursuant to KRS² 418.040. On July 27, 2018, Appellees filed a motion to dismiss.

By opinion and order entered February 22, 2018, the circuit court granted Appellees' motion. The court explained that the standard of its review is that of "some evidence" as outlined in *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). The court determined that the adjustment officer's (AO) finding of guilt was supported by "some evidence"—namely, the camera footage. The court found no error by use of the term "altercation" in the AO's findings. As the court noted, CPP 15.2(I) defines "Physical Action" as "any act of fighting, hitting, kicking, shoving, pushing, biting, using force or other similar types of physical contact" The court explained that altercation is a synonym for fight and that "a 'physical altercation' would be understood the same as 'physical fight'" The court further explained that the fact that "others could have reached different conclusions from review of the same evidence, does not constitute error or a violation of Tucker's constitutional rights."

On March 8, 2019, Tucker filed a notice of appeal to this Court. Before us, she contends: (1) that the circuit court improperly dismissed the case because she sufficiently alleged facts that, if true, would entitle her to relief; and

² Kentucky Revised Statutes.

(2) that she was denied minimum due process, because the “some evidence” standard was not met. We address the two arguments together.

The deference afforded to due process is lesser in degree in the context of prison disciplinary cases.

Prison disciplinary proceedings are not 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). Prison disciplinary proceedings are civil, administrative actions. In *Wolff*, the United States Supreme Court held that procedural due process, in the context of prison disciplinary proceedings, requires: “(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 defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.” *Superintendent, Mass. Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985).

Wilson v. Haney, 430 S.W.3d 254, 257 (Ky. App. 2014).

“[C]ourts only *review* the decisions of the Adjustment Committee and prison officials are afforded broad *discretion*. This Court must affirm if there is ‘some evidence’ supporting the charge.” *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky. App. 2003) (emphasis original).

Tucker argues that she had “alleged at least some facts, if taken as true and most favorable to her” that would entitle her to relief. She notes that two other officers had reviewed the security camera footage and could not determine if

Tucker had committed a physical action. Tucker also contends that the AO's finding that the video footage showed a "physical altercation" is insufficient for a finding of guilt of a Category 3-11 offense. We do not agree.

In determining the existence of "some evidence" as required by *Wolff*, the analysis "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence." *Walpole*, 472 U.S. at 455, 105 S.Ct. at 2774. . . . ["]Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Id.*, 472 U.S. at 455-56, 105 S.Ct. at 2774.

Wilson, 430 S.W.3d at 257.

In the case before us, the AO reviewed the camera footage and saw "Palmer and Tucker in a physical altercation while on the ball field." The circuit court properly applied the "some evidence" standard and determined that the camera footage supported the AO's determination of guilt. We find no error in the analysis and reasoning of the circuit court.

We AFFIRM the opinion and order of the Shelby Circuit Court.

ALL CONCUR.

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