

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000416-MR

CHRISTOPHER GILMORE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 18-CI-00908

JAMES ERWIN, COMMISSIONER,
KENTUCKY DEPARTMENT OF
CORRECTIONS; TIFFANY RATLIFF,
WARDEN, BLACKBURN CORRECTIONAL
COMPLEX; MICHAEL AMMONS,
ADJUSTMENT OFFICER, BLACKBURN
CORRECTIONAL COMPLEX; CHARLES
CARTER, INVESTIGATOR, BLACKBURN
CORRECTIONAL COMPLEX; AND TAYLOR
CAPUSTA, CORRECTIONS OFFICER,
BLACKBURN CORRECTIONAL COMPLEX

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, KRAMER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Christopher Gilmore, *pro se*, brings this appeal from a

February 12, 2019, Order of the Franklin Circuit Court dismissing Gilmore's

petition for declaratory judgment challenging prison disciplinary sanctions. We affirm.

Gilmore was an inmate at the Blackburn Correctional Complex (Blackburn). While searching Gilmore's belongings, an officer discovered tobacco in Gilmore's locker. Blackburn is a smokeless facility. Gilmore was charged with possession or promoting dangerous contraband. A disciplinary adjustment hearing was held, and the adjustment officer found Gilmore guilty. The hearing officer issued a penalty of 180 days forfeiture of good-time credit with 90 days suspended for 180 days. The Warden upheld the penalty.

Gilmore then filed a petition for declaratory judgment (18-CI-00908) in the Franklin Circuit Court.¹ In the petition, Gilmore asserted that he was improperly charged with possession or promoting dangerous contraband. As Gilmore was committed to a minimum custody facility, Gilmore claimed that his charge should have been merely use or possession of tobacco products in a minimum custody facility, which carried a lesser penalty.

¹ Christopher Gilmore also filed another petition for declaratory judgment (18-CI-00926) in the Franklin Circuit Court challenging a second prison disciplinary hearing and sanctions. The circuit court consolidated 18-CI-00908 with 18-CI-00926. However, Gilmore makes no arguments on appeal as to the second disciplinary proceeding (18-CI-00926).

The circuit court ultimately granted a motion to dismiss under Kentucky Rules of Civil Procedure (CR) 12.02 and dismissed the petition for declaratory judgment. This appeal follows.

In its Order, the circuit court dismissed Gilmore's petition for declaratory judgment under CR 12.02; however, it is evident that the circuit court considered matters outside of the pleadings. Consequently, we shall treat the order as a summary judgment. CR 12.03; *Cabinet for Human Resources v. Women's Health Services, Inc.*, 878 S.W.2d 806, 807 (Ky. App. 1994). Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Our review proceeds accordingly.

Gilmore contends that the circuit court erroneously dismissed his petition for declaratory judgment. Gilmore argues that he was improperly charged with and found guilty of possession or promoting dangerous contraband in violation of his constitutional rights. He emphasizes that Blackburn is a minimum custody facility. As he was incarcerated in a minimum custody facility, Gilmore argues that he could only be charged with and convicted of possession of tobacco products, which carries a lesser penalty.

It is well-established that “[p]rison disciplinary proceedings are not criminal prosecutions and the full panoply of rights due a defendant in such proceedings does not apply.” *Wilson v. Haney*, 430 S.W.3d 254, 257 (Ky. App. 2014) (quotation marks and citation omitted). Rather, in a prison disciplinary proceeding, due process is satisfied if some evidence supports the adjustment officer’s finding of guilt. *Smith v. O’Dea*, 939 S.W.2d 353, 356 (Ky. App. 1997).

In its order dismissing Gilmore’s petition for declaratory judgment, the circuit court reasoned:

The Court finds that [Gilmore’s] due process rights were not violated by Respondents. [Gilmore] had notice of the disciplinary charge, he signed the document acknowledging receipt of the report, he was aware that he had the right to call witnesses and present evidence, and [Gilmore] received a written statement by the fact[-]finder about the evidence relied on and the reasons for the disciplinary action. Further, upon review of the record, the Court concludes that there is evidence in the record that supports Respondents’ findings and therefore the Court must uphold the adjustment officer’s findings. *Id.*

Further, [Gilmore] contends that he has the right to be charged with the offense that has a lesser penalty attached because at the time of this incident he was incarcerated in a minimum custody facility. This matter had two different classifications: (1) Possession or Promoting of Dangerous Contraband and (2) Use or Possession of Tobacco Products in a Minimum Custody Facility. [Gilmore] was charged and convicted of Possession or Promoting of Dangerous Contraband. Respondents assert that despite [Gilmore’s] belief that he

should have been charged with the lesser offense, Use or Possession of Tobacco Products in a Minimum Custody Facility, that the prison should be given discretion in determining the appropriate offense to charge an inmate. Respondents also state that [Gilmore] has received three (3) prior disciplinary write-ups for possession and smuggling of tobacco. The Court agrees with Respondents that prison officials have discretion in determining the appropriate offense with which to charge an inmate found to have violated prison rules. Prisons are in the best position to make such determinations as the facilities are tasked with maintaining order and are the ones with first-hand knowledge of violations of institution policies and procedures.

Order at 3-4.

We agree with the circuit court's reasoning and conclusions. We would add that tobacco is specifically listed as an item of dangerous contraband in Kentucky Corrections Policies and Procedures 9.6(II)(A)(8). Thus, tobacco does constitute dangerous contraband. And, we have not been cited to a specific policy or rule in Kentucky Corrections Policies and Procedures prohibiting an inmate, who possesses tobacco in a minimum custody facility, from being charged with possession or promoting dangerous contraband.

In sum, we are of the opinion that summary judgment was proper, and the circuit court did not err by dismissing Gilmore's petition for declaratory judgment.

For the foregoing reasons, the Order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Christopher Gilmore, *Pro Se*
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BRIEF FOR APPELLEES:

Angela E. Cordery
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