

RENDERED: MARCH 6, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000809-MR

BRYAN BRANHAM

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 19-CI-00038

RAVONNE SIMS, WARDEN;
CAPTAIN ANDREW BYRD,
ADJUSTMENT OFFICER;
CAPTAIN DURELL ST. CLAIR,
INTERNAL AFFAIRS/REPORTING
OFFICER; AND JAMES ERWIN,
COMMISSIONER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, MAZE, AND L. THOMPSON, JUDGES.

MAZE, JUDGE: Bryan Branham appeals from an order of the Oldham Circuit Court dismissing his petition for declaratory judgment in a prison disciplinary

action. We agree with the circuit court that the outcome of the proceeding comported with the requirements of due process and was supported by some evidence. Hence, we affirm.

At the time of the proceeding, Branham was an inmate at the Roederer Correctional Complex in LaGrange, Kentucky. According to the disciplinary report, on August 7, 2018, Branham called an outside phone number to speak with the sister of a fellow inmate, Stuart Cook. He informed the sister that Cook got “locked up,” and then asked the sister if she had talked to “shorty.” Branham then instructed the sister to get in contact with “shorty.” Cook’s sister then contacted a correctional officer with whom Cook was having a relationship.

Based on this conduct, Corrections Captain Durrell St. Clair conducted an investigation and prepared a disciplinary report form charging Branham with tampering with physical evidence or hindering investigation, a Category 5, Item 7 offense. The report alleged that Branham contacted Cook’s sister with the intent of alerting the corrections officer to the fact that the Internal Affairs unit was investigating her relationship with Cook. In an interview with Cpt. St. Clair, Branham denied any intention of hindering the investigation, but stated that he merely wanted to let Cook’s family know of his situation.

Branham received advance written notice of the charges. He also acknowledged that he received a copy of the report and was advised of his right to

call witnesses and have an inmate legal aide present at the Adjustment Hearing. Following the hearing, the Adjustment Officer, Captain Andrew Byrd, found Branham guilty of the charged offense. Based on the finding, Branham was subject to the loss of ninety days of good-time credit and thirty days' disciplinary segregation, with eight days to serve and the remaining days suspended.

Branham appealed to Warden Ravonne Sims, who denied the appeal on September 12, 2018. Thereafter, Branham filed a declaratory judgment action challenging the Adjustment Committee proceedings. The circuit court dismissed the action, finding that Branham failed to demonstrate a procedural or due process violation and there was some evidence supporting the Adjustment Officer's findings. This appeal followed.

Prison disciplinary proceedings, such as the Adjustment Committee hearing in the case before us, are not criminal prosecutions. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974). Rather, these proceedings are considered administrative proceedings. Consequently, prisoners subject to disciplinary proceedings do not enjoy the full panoply of due process protections. *Id.* Prisoners do, however, retain a minimal right to due process subject to the many limitations inherent in the penal system. *Id.*, 418 U.S. at 557, 94 S. Ct. at 2975. In order to comply with the minimum requirements of procedural due process, an inmate cannot be deprived of a protected liberty interest

unless he receives: “(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 his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.” *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985) (citing *Wolff*, 418 U.S. at 563-67, 94 S. Ct. at 2978-80). Additionally, due process requires that there be “some evidence” in the record to support the disciplinary board’s decision. *Id.* This standard merely requires some basis in the record in which the reviewing court can deduce the reasons for the disciplinary board’s finding. *Id.*, 472 U.S. at 457, 105 S. Ct. at 2775; *see also Smith v. O’Dea*, 939 S.W.2d 353 (Ky. App. 1997).

Branham first argues that the disciplinary report does not clearly and concisely describe the facts supporting the charge, as required by CPP¹ 15.6(II)(C). The record clearly refutes this allegation. Cpt. St. Clair’s report clearly sets out the facts surrounding Branham’s call to Cook’s sister and his efforts to alert the correctional officer of the possible Internal Affairs investigation. While Branham takes issue with Cpt. St. Clair’s conclusion that this conduct amounted to hindering

¹ Corrections Policies and Procedures.

an investigation, the report on its face was more than sufficient to advise Branham of the nature of the charges against him.

Branham next argues that Cpt. Byrd was not impartial and should have been disqualified due to bias or foreknowledge of the charges. In support of this allegation, Branham submitted an affidavit from an inmate who states that Cpt. Byrd spoke to Branham about the charge while they were in the restricted housing unit. Branham contends that Cpt. Byrd's actions amount to a violation of CPP 15.6(II)(A), which provides that a committee member or hearing officer shall be disqualified in any case in which he or she participated as an investigating officer. However, the affidavit merely alleges that Cpt. Byrd expressed an opinion about the charges, not that he participated as an investigating officer.

Moreover, Branham had a full opportunity to present his own witnesses and cross-examine the witnesses against him. Furthermore, Branham did not deny calling Cook's sister. He merely alleged that he did not intend to impede the Internal Affairs investigation into the relationship between Cook and the corrections officer. However, Branham clearly directed Cook's sister to call "shorty," and there was evidence that "shorty" was the nickname for the corrections officer. In addition, the corrections officer received a text from Cook's sister just minutes after Branham called. The corrections officer also testified that

Branham was aware of her relationship with Cook. Based on this evidence, Cpt. Byrd found Branham's explanation of the call to be not credible.

Under the circumstances, we must conclude that there was "some evidence" supporting Cpt. Byrd's finding that Branham was guilty of tampering with physical evidence or hindering investigation. Cpt. Byrd's alleged bias, even if supported, did not affect Branham's substantial rights. Therefore, the circuit court properly dismissed Branham's declaratory judgment action.

Accordingly, we affirm the order of the Oldham Circuit Court.

ALL CONCUR.

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