STATE OF MICHIGAN

COURT OF APPEALS

EZELL GRAYSON,

Plaintiff–Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant–Appellee.

UNPUBLISHED
November 22, 1996

No. 180399
LC No. 93-74911-AA

Before: MacKenzie, P.J., and Markey and J.M. Batzer*, JJ.

PER CURIAM.

Plaintiff appeals by delayed application for leave granted from a circuit court order that (1) affirmed a finding in a prisoner disciplinary hearing that he was guilty of the major misconduct of threatening behavior and (2) revoked the suspension of his circuit court filing fees and costs. The order was entered after a prior remand by a panel of this Court. See Court of Appeals docket no. 173421. We affirm in part and vacate in part.

As a threshold matter, we note that, because defendant has not filed a cross-appeal, its claim that plaintiff's appeal was untimely is not properly before us. See *People v Gallego,* 199 Mich App 566, 575-576; 502 NW2d 358 (1993).

Turning to the merits of plaintiff's claims, we agree that defendant should have provided plaintiff with the requested copy of the sign-out log from the corrections center where plaintiff was housed at the time of the incident in question. However, we also agree with the circuit court's conclusion that the failure to produce the document does not warrant reversal. The sign-out entries only indicate when plaintiff left the correctional center and when he returned to the facility; they do not directly prove with any reasonable degree of certainty plaintiff's whereabouts in the interim time period, when the threatening behavior was alleged to have occurred. Accordingly, we agree with the circuit court's conclusion that the error was harmless.

We also find that, while the hearing officer should have specifically stated on the record the reason why plaintiff was denied access to a copy of the statement Amber Carroll gave to Department of

Corrections staff member Bernard Waterman, see MCL 791.252(h); MSA 28.2320(52)(h), that error was harmless as well. Without invoking the statute, the examiner's report indicated that the statement had been given confidential status in order to prevent physical retaliation, justifying the nonproduction. Furthermore, even without a copy of Carroll's statement to Waterman, plaintiff was made aware of the substance of the statement; it was quoted in Waterman's misconduct report, a copy of which plaintiff received and signed. Additionally, plaintiff informed the hearing officer that Carroll verified to him that she made the statements Waterman reported. Under these circumstances, plaintiff is not entitled to relief.

We also reject plaintiff's claim that the hearing officer's decision was not supported by competent evidence, see *Consumers Power Co v Public Service Comm*, 189 Mich App 151, 157; 472 NW2d 77 (1991), because it took confidential evidence into consideration. Based on our review of the record, there was sufficient evidence to conclude that the statements of the confidential witness were credible and reliable. Further, there is sufficient evidence in the record to establish that the confidential statement was considered in good faith. We therefore find no error. *Casper v Marquette Warden*, 126 Mich App 271, 275; 337 NW2d 56 (1983).

Finally, we agree with plaintiff that the circuit court erred by revoking its previous suspension of plaintiff's filing fees and costs without determining whether plaintiff was indigent, despite the order of this Court in docket no. 173421 reversing the revocation of that suspension. We therefore vacate the circuit court's order to the extent that it again revoked the suspension of plaintiff's filing fees. *Martin v Corrections Department (On Remand)*, 201 Mich App 331, 335; 505 NW2d 915 (1993). The circuit court is not to disturb its earlier suspension of filing fees and costs until it is determined that plaintiff is no longer indigent. In all other respects, the order is affirmed.

Affirmed in part and vacated in part

/s/ Barbara B. MacKenzie
/s/ Jane E. Markey
/s/ James M. Batzer