

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000808-MR

LARRY E. WATKINS-El¹

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 01-CI-00557

PATTI WEBB, WARDEN

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND PAISLEY, JUDGES.
PAISLEY, JUDGE. This is a pro se appeal from an order entered
by the Muhlenberg Circuit Court dismissing appellant's petition
for a declaration of rights in a prison discipline case. For
the reasons stated hereafter, we affirm.

Appellant was an inmate at Green River Correctional
Complex during the times relevant to this proceeding. Prior to
February 4, 2001, appellant and another inmate organized a

¹ Appellant identifies himself in his Notice of Appeal by the surname of
Watkins-El. He was identified in lower court documents by the surname of
Watkins.

meeting to discuss certain proposed legislation to abolish the parole board. The gathering was cancelled after the inmates were advised that it was not an authorized meeting.

According to the commonwealth, appellant nevertheless participated in organizing a gathering in the prison gym on February 5 to discuss the proposed legislation. Prison staff observed the situation in the gym for a period of time before removing appellant and another inmate from the gym and taking steps to initiate a disciplinary write-up. Appellant, by contrast, denied that he organized any gathering or engaged in any wrongdoing on February 5.

The subsequent disciplinary investigation included the collection of confidential information as well as statements from persons who were involved in the incident. After a hearing, appellant was determined to be guilty of inciting to riot. He was assessed a penalty of ninety days in segregation, and he lost 180 days of good time. His appeals to the warden and the Commissioner of Corrections were denied, and the circuit court denied appellant's petition for declaration of rights. This appeal followed.

Appellant first contends that the trial court erred by failing to find that the disciplinary hearing officer also participated in the investigation, thereby violating the

policies and procedures (CPP) of the Kentucky Department of Corrections. We disagree.

CPP 15.6(VI)(A)(4)(a) provides that an officer shall be disqualified from hearing any case in which he or she has "participated as an investigating officer." Here, our review of the entire record available on appeal shows that the investigation was conducted by Officer R.A. Bailey, and that the hearing officer was Lt. Robert Jenkins. The sealed portion of the record shows that Bailey gathered information from a confidential informant, and that Bailey stated in writing that such information was reliable because:

1. The report is consistent with the events as they occurred.
2. The report is consistent with information discovered during the investigation and with information provided by staff.
3. The number of inmates signing the report.

Jenkins subsequently sent appellant a memorandum summarizing "the confidential information that will be used against you at your scheduled hearing" as being that "[i]nformant(s) Stated that Inmate Harris and Inmate Larry Watkins #096394 made plans to have a meeting in the Library on February 4, 2001." The memorandum further stated:

The information provided by the above informant(s) is deemed reliable based on:

1. The information provided is consistent with the events as they occurred.

2. The information provided is consistent with information discovered during the investigation and with information provided by staff.
3. The information was provided by more than three and less than ten informants and the information provided by each corroborates with the others [sic] information.

Contrary to appellant's contention, it is clear that Jenkins' memorandum simply summarized the results of Bailey's confidential investigation, rather than providing the results of an independent investigation by Jenkins. As the remainder of the record contains nothing to suggest that Jenkins otherwise conducted any type of independent prehearing investigation, it is clear that appellant is not entitled to relief on this ground.

Next, appellant contends that the trial court erred by finding that the evidence was sufficient to support the decision of the prison disciplinary body. We disagree.

KRS 525.040(1) provides that "[a] person is guilty of inciting to riot when he incites or urges five (5) or more persons to create or engage in a riot." KRS 525.010(5) in turn defines "riot" as "a public disturbance involving an assemblage of five (5) or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other

government function." Although appellant asserts that each disciplinary hearing witness responded in the negative to a series of ten questions regarding the alleged offense, we are unable to review the alleged testimony since appellant failed to make a transcript of the hearing available to us on appeal. However, even if the witnesses so testified, the reports of the confidential informant and the officers clearly met the standard of providing "some" evidence to support the disciplinary charge against appellant. Hence, appellant is not entitled to relief on this ground.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Larry E. Watkins-El - Pro Se:
Eddyville, Kentucky