RENDERED: MARCH 21, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000875-MR

LAMONT WARNER — APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 02-CI-00041

GEORGE MILLION, WARDEN
and WILLIAM CALLAHAN — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND PAISLEY, JUDGES.

EMBERTON, CHIEF JUDGE. Lamont Warner is an inmate at the Eastern Kentucky Correction Complex who filed a declaratory judgment action alleging that his Sixth and Fourteenth Amendment rights were violated during a disciplinary proceeding. The trial court dismissed the action and we affirm.

Warner was charged with assault, or physical violence, against an employee after he allegedly pushed a prison employee into a wall. Following a hearing held on January 16, 2001, he

was found guilty and penalized with one hundred eight days of disciplinary segregation and the loss of three hundred sixty days of good time credit. Upon appeal to the prison warden, the penalty was reduced to ninety days segregation and the loss of one hundred eighty days good time credit. The warden's review of the proceeding was completed on February 2, 2001. Although the certificate of service on appellant's petition certified that it was deposited in the prison mail system on February 2, 2002, it was not filed in the circuit court until February 7, 2002. Appellees filed a motion to dismiss the petition as both time-barred and on the merits. Without a hearing and without making specific findings, the circuit court dismissed the action.

Appellees contend that since the appellant's petition alleges violation of the Sixth and Fourteenth Amendments to the United States Constitution, the one-year statute of limitations established in KRS[1] 413.140(1)(a) is applicable and the action is time-barred. Federal due process challenges to prison disciplinary proceedings are cognizable as claims under 42 U.S.C. §1983.[2] In this Commonwealth, challenges to prison disciplinary proceedings that do not seek immediate release from incarceration are properly brought through a petition for

[1] Kentucky Revised Statutes.

[2] Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed. 935 (1974).

declaratory judgment.[3] The applicable limitations period for actions under 42 U.S.C. §1983 is the one year provision provided for in KRS 413.140(1)(a).[4]

An issue neither addressed by appellees nor by appellant is whether appellant's petition is timely filed under the "mailbox rule."[5] CR[6] 3 provides that the filing of a complaint with the court and issuance of a summons commences an action. Under the rule, the action is not commenced until received and filed with the court clerk and summons has issued. However, in Houston v. Lack,[7] the court held that a pro se prison inmate who filed a notice of appeal was deemed to have filed it at the moment the inmate lost control over the document by entrusting it into the hands of the state, the prison mail delivery system. The court reasoned that unlike litigants not incarcerated who have direct access to the U.S. Postal Service or the option of personal delivery, the inmate has no available means of delivery other than entrustment to prison officials. Federal courts have widely applied the mailbox rule in the

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[3] Graham v. O'Dea, Ky. App., 876 S.W.2d 621, 622 (1994).

[4] Board of Trustees of University of Kentucky v. Hayes, Ky., 782 S.W.2d 609 (1990).

[5] February 2, 2002, was on a Saturday. Pursuant to CR 60.01, would have been Monday February 4, 2002.

[6] Kentucky Rules of Civil Procedure.

[7] 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988).

context of inmate civil actions. As stated in Higgenbottom v. McManus:[8]

> A party whose complaint reaches the Clerk after the statute of limitations has expired ordinarily cannot maintain a lawsuit, even if the complaint was placed in the mail during the limitations period. See Fed. R. Civ. P. 3 and 5(e). However, the Supreme Court has demonstrated a willingness to extend a special "mailbox rule" to persons who are incarcerated and are filing their legal documents pro se. Houston v. Lack, 487 U.S. 266, 276, 101 L.E.2d 245, 108 S.Ct. 2379 (1988). The Houston opinion applied this exception to the filing of notices of appeal, id. at 270; at least one Circuit Court has extended the rule to include complaints filed by prisoners pro se. See Lewis v. Richmond City Police Dept., 947 F.2d 733, 735-36 (4th Cir. 1991). The Fourth Circuit described the Houston exception as "a rule of equal treatment," one that "seeks to ensure that imprisoned litigants are not disadvantaged by delays which other litigants might readily overcome." Lewis, 947 F.2d at 735.
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> The Supreme Court's decision in Houston proceeded from the fundamental observation that
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> > whereas the general rule has been justified on the ground that a civil litigant who chooses to mail a notice of appeal assumes the risk of untimely delivery and filing, a pro se prisoner has no choice but to hand his notice over to prison authorities for forwarding to the court clerk.
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> Houston, 487 U.S. at 275 (emphasis in original, citation omitted). The same is true in the case at hand. Unlike the

[8] 840 F.Supp 454, 455-56 (W.D. Ky. 1994).

> ordinary litigant, Plaintiff could not personally deliver his Complaint to the Court Clerk; he could not personally deposit his document at a United States Post Office; he had no lawyer to monitor the filing status of his Complaint; he could not personally take steps to cure delays in the processing of his legal documents. See id. at 271. Extending Houston's mailbox rule to Plaintiff under such circumstances extends no special privilege to him, but merely takes into consideration the unique disabilities that Plaintiff's status forces upon him.

Since Houston, supra, state courts have followed the Supreme Court's logic when applying their own state's Rules of Civil Procedure.[9]

We agree with the reasoning in those cases which approve of the mailbox rule where a pro se inmate delivers a petition to a prison official for mailing within the statutory limitations period. To hold otherwise would implicate the prisoner's right to access to the courts and the equal protection clause. As stated in Haag v. State:[10]

> A rule other than the mailbox rule would interject a level of arbitrariness that could undermine equal protection and equal access to the courts. For example, two pro se inmates who delivered a document to prison officials at the same time, seeking the same relief, and facing the same court deadline, could be treated quite differently based entirely on happenstance.

[9] See e.g., Setala v. J.C. Penney Co., 40 P.3d 886, 97 Haw. 484 (2002) and cases cited therein; Haag v. Florida, 591 So.2d 614 (1992).

[10] 591 So.2d 614, 617 (Fla. 1992).

> One inmate's petition might make it to the courthouse on time, while the other's might be delayed for unknown reasons. The first would obtain a full hearing, while the second would be denied relief. Such arbitrariness cannot fairly be characterized either as equal protection or equal access to the courts, and it therefore cannot be allowed.

We note that our decision in this case is limited to the circumstances presented. Appellant is a pro se inmate and there is no factual issue presented as to the date he delivered his petition to prison officials. Appellees do not deny that appellant relinquished possession of the petition on February 2, 2002, three days prior to the running of the limitations period.[11] The petition was timely filed.

Although we reject appellees' statute of limitations contention, we nevertheless affirm the trial court. When an inmate alleges violations of constitutional rights during a prison disciplinary proceeding, the circuit court's role is one of review. "The court seeks not to form its own judgment, but, with due deference, to ensure that the agency's judgment comports with the legal restriction applicable to it.[12] Absent an administrative record permitting meaningful review, there is

[11] Because there is no issue as to the date the petition was "mailed," we do not address the matter. See Higgenbottom, supra.

[12] Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 355 (1997).

no need for the court to conduct an evidentiary hearing or independent findings of fact.[13]

Appellant was given all the procedural due process required. He received advance notice of the charges, an opportunity to present evidence, and provided a written statement to the fact finder.[14] If there is "some evidence" to support the disciplinary decision, it will be upheld. The basis for the standard of review is explained in Smith, supra:

> Without question the operation of prisons is one of the most difficult as well as one of the most important of the state's administrative functions. Prisons are a vital part of the government's effort to preserve social order and domestic tranquility. They provide this fundamental benefit, however, only at the cost of becoming places where the risk of disorder and violence is greatly heightened. The United States Supreme Court has recognized the unique role of prisons among administrative institutions in a series of cases construing the procedural due process rights of prison inmates. In Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), the Court ruled that, in prison disciplinary proceedings where a prisoner's good behavior credit is at stake, the Due Process Clause of the United States Constitution is implicated, but the process due is no more than notice of the charges, a reasonable opportunity to be heard, and a brief written finding suitable for judicial review. The Court approved these minimal procedures after balancing the prison

[13] Id.

[14] See Superintendent Mass. Correctional Institution, Warpole v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

> administration's profound interest in maintaining order against the inmate's relatively minor interest in avoiding a portion of his sentence.[15]

The evidence presented is sufficient to support the disciplinary action. Appellant was involved in an altercation with an inmate and during the course of the fight pushed a prison employee against a wall. Although appellant denies that he intended to push the employee but was the result of his attempt to escape the inmate's attack, intent is not a necessary element for a violation of the institutional rule as it is under our criminal statutes.[16]

The remaining issues raised are without merit. The order of the Morgan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEES:
Lamont Warner, Pro Se West Liberty, Kentucky	Rebecca Baylous DEPARTMENT OF CORRECTIONS Frankfort, Kentucky

[15] Smith, at 357.

[16] Noting appellant's lack of intent, the warden reduced the punishment recommended by the adjustment committee.