

RENDERED: JUNE 27, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001008-MR

JAMES DAWALT

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 01-CI-00529

CHARLES HOWELL

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, HUDDLESTON¹ AND JOHNSON, JUDGES.

JOHNSON, JUDGE: James Dawalt has appealed, pro se, from an order of the Boyle Circuit Court, which dismissed his Petition

¹ Judge Huddleston concurred in this Opinion prior to his retirement effective June 15, 2003.

for Declaration of Rights filed pursuant to KRS² 418.040. Having concluded that the circuit court did not err, we affirm.

On June 10, 2001, Dawalt was an inmate at Blackburn Correctional Complex (BCC). On that date a disciplinary report was filed against him charging him with "causing a health hazard" after a correctional officer saw him urinating in a water fountain. The charge was investigated and a hearing was held before an adjustment officer. At the hearing, Dawalt waived his right to call witnesses. He was found guilty as charged and sentenced to disciplinary segregation for 90 days and to forfeiture of 180 days of good-time credit. Dawalt appealed to the warden, who affirmed the decision of the adjustment officer.

Subsequently, Dawalt filed a complaint in the Boyle Circuit Court seeking declaratory relief, punitive and compensatory damages, restoration of his good-time credit, and expungement of the disciplinary action from his record. He alleged that his due process and equal protection rights were violated. He claimed that he received no evidence of the charges against him, that the correctional officer failed to accurately report the incident, that no scientific tests were done to prove he urinated in the water fountain, that the adjustment officer failed to take his prior conduct and other

² Kentucky Revised Statutes.

evidence into consideration, that prison officials failed to produce an incident report from a correctional officer who witnessed Dawalt with his pants unzipped, and that the hearing officer failed to make appropriate findings of fact. The circuit court summarily dismissed Dawalt's petition, finding that he had not been deprived of his due process rights.

Declaratory judgment suits involving inmate disciplinary actions invoke the circuit court's authority to review the administrative agency action to determine whether the inmate's petition and supporting materials raise specific, genuine issues of material fact sufficient to overcome the presumption that the Department of Corrections acted properly.³

An inmate may not be deprived of earned statutory good-time credit without a meaningful opportunity to challenge the deprivation.⁴ However, inmates are only entitled to minimum requirements of procedural due process including: (1) advance written notice of disciplinary charges; (2) the opportunity to call witnesses and present documentary evidence consistent with institutional safety and correctional goals; (3) a written statement of the evidence relied upon and the reasons for the

³ See Smith v. O'Dea, Ky.App., 939 S.W.2d 353, 356 (1997); and Kentucky Rules of Civil Procedure 12.02.

⁴ Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

disciplinary action; and (4) an impartial decision-making tribunal.⁵

On June 11, 2001, Dawalt received a disciplinary report, which provided him with advanced written notice of the charges and evidence against him. A hearing was held on June 21, 2001, at which time Dawalt waived his right to call witnesses. The hearing officer prepared a disciplinary report as required by C.P.P.⁶ 15.6. The finding of fact was that Dawalt had caused a health hazard by urinating in a water fountain designed for drinking. The evidence relied upon was the incident and investigation reports wherein a correctional officer stated that he witnessed Dawalt urinating in a water fountain. The disciplinary report states that the penalty was being imposed to control the inmate's behavior.

Dawalt contends that the correctional officer never actually saw him urinating in the water fountain. He claims that the officer admitted that Dawalt's back was to him. We find no such admission by the correctional officer in the record. The officer's statement was that he "saw inmate Dawalt #120721 urinating in the water fountain." While the officer also states that he approached Dawalt to ask what he was doing and that when Dawalt turned around, his pants were unzipped, he

⁵ Id. at 563-67.

⁶ Kentucky Correctional Policies and Procedures.

did not state that Dawalt's back was to him or that he could not see Dawalt urinating in the fountain, or as Dawalt claims, that he was assuming Dawalt was urinating in the fountain. The record shows that the investigating officer verified the facts.

In prison disciplinary proceedings, due process requires that a disciplinary committee's decision to impose sanctions for violations of prison rules must only be supported by "some evidence in the record."⁷ Kentucky recognizes and follows these requirements.⁸ "Ascertaining whether the standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board."⁹ The statement by the correctional officer that he saw Dawalt urinating in the water fountain is some evidence to support the disciplinary action taken. Dawalt received all the substantive and procedural due process rights to which he was entitled.

The order of the Boyle Circuit Court dismissing his petition for declaratory relief is affirmed.

⁷ Superintendent v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356, 364 (1985).

⁸ Stanford v. Parker, Ky.App., 949 S.W.2d 616, 617 (1996); Smith, 939 S.W.2d at 357.

⁹ Hill, 472 U.S. at 456, 105 S.Ct. at 2775, 86 L.Ed.2d at 366.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Dawalt, Pro Se
Burgin, Kentucky

BRIEF FOR APPELLEE:

No brief filed.