

RENDERED: FEBRUARY 7, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001018-MR

JOSEPH MONEY

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 02-CI-00029

WILLIAM SEABOLD, ET. AL.

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS AND DYCHE, JUDGES; AND POTTER, SPECIAL JUDGE¹
POTTER, SPECIAL JUDGE. This is a pro se appeal from an order
entered by the Oldham Circuit Court dismissing appellant's
petition for a declaration of rights in a prison disciplinary
proceeding. For the reasons stated hereafter, we affirm.

Appellant is a state prisoner who was in the custody
of the Department of Corrections at all times relevant to this

¹Senior Status John Woods Potter sitting as Special Judge by Assignment
of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky
Constitution.

appeal. It is undisputed that in August 2001, while he was being escorted to his cell within the Luther Lockett Correctional Complex, appellant passed a female corrections training officer, S. Jemley, who was standing beside her desk. He grabbed Jemley's ankle and barked like a dog. Jemley immediately informed appellant that his behavior was inappropriate, and she filed a disciplinary report several days later.

Appellant was initially charged with "assault or physical action against an employee." That charge was subsequently amended to "inappropriate sexual behavior with another person," which is defined in part in Kentucky Corrections Policies and Procedures (KCPP) as including "seductive or obscene acts that include intimate touching." The prison disciplinary committee (hereinafter committee) conducted a hearing and assessed appellant a penalty of 45 days in disciplinary segregation and forfeiture of 60 days of good time. After an unsuccessful appeal to the prison warden, appellant filed the action below. The circuit court granted appellees' motion to dismiss, and this appeal followed.

It is well established that "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963,

2975, 41 L.Ed.2d 935 (1974). See also Stanford v. Parker, Ky.App., 949 S.W.2d 616, 617 (1996). Moreover, "[s]ome evidence' of guilt is sufficient to support a prison disciplinary board's finding of guilt and satisfy due process." Stanford, 949 S.W.2d at 617, citing Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985).

Here, appellant contends that the trial court erred by failing to find that he was denied due process because the committee allegedly refused to permit him to confront or cross-examine the witnesses against him. However, the record shows that it is undisputed that appellant grabbed Jemley's leg and barked, that Jemley immediately told him that his conduct was inappropriate, and that Jemley verified the accuracy of the written report of appellant's misconduct. Absent any real dispute regarding these events, we cannot say that the committee failed to satisfy KCPP 15.6(IV)(D)(2)(g)(1), which provides that "[c]onfrontation and cross-examination may be accomplished with the use of . . . written statements."

Moreover, we are not persuaded by appellant's contention that the evidence was insufficient to support the charge against him. As noted above, appellant did not dispute that he grabbed the female officer's leg and barked like a dog. Certainly, an inference may be drawn that these events

constituted "some evidence" that appellant engaged in a "seductive or obscene act" which included "intimate touching." Hence, we cannot say that the court erred by failing to find that the evidence was insufficient.

We also are not persuaded by appellant's remaining contentions on appeal. Although appellant complains that the trial court erred by failing to review a complete record of the proceedings, including tapes of both hearings, there is nothing in the record to show that appellant specifically requested a tape of the first hearing or even that such a tape was available. Moreover, appellant has not demonstrated any way in which he was prejudiced by any failure of the trial court to review the tape of the first proceeding.

Next, although appellant complains that he was not advised of his Miranda rights in connection with the events below, he was not entitled to such advice since the events did not lead to criminal charges against him. Moreover, in any event, the alleged failure to provide such advice was nonprejudicial since appellant independently admitted during the hearing below that he committed the alleged acts.

Next, there is no merit to appellant's contention that he was not afforded legal assistance during the disciplinary proceedings. Indeed, appellant's own transcript of the second hearing clearly reflects that he identified one Tommy Reeves as

his legal representative. Contrary to appellant's contention, he had no right to continue receiving legal assistance from a particular employee of one prison facility once he was transferred to another facility.

Next, appellant asserts that the court erred by finding that he waived his objections to the disciplinary report's alleged inaccuracies as to the time of the incident, and as to the date and time of the report. However, our review of the record indicates that his objections were specifically waived. Further, in any event appellant was not prejudiced by any such evidence since the contested dates and times were irrelevant to the outcome of the proceedings below. Similarly, we are not persuaded by appellant's contention regarding his alleged failure to timely receive a copy of the log which reported the incident, since the fact that the incident occurred was never disputed and appellant has not demonstrated any way that he was prejudiced by such evidence.

Next, appellant contends that the trial court erred by failing to find that the committee was not fair and impartial. Absent any evidence to support this contention other than the fact that the committee failed to reach a decision in favor of appellant, we simply cannot agree. Similarly, after reviewing the record we cannot agree that appellant is entitled to relief

on the ground that the court erroneously failed to address the merits of his case.

Finally, appellant contends that the trial court erred by entering a final order dismissing his claim prior to the date on which he responded to appellee's motion to dismiss. Having reviewed the record, including appellant's response to the motion to dismiss and his failure to file a motion requesting the trial court to reconsider its order, we cannot say that any error in this regard was prejudicial.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

No brief filed for appellee.

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