

**Commonwealth Of Kentucky**

**Court Of Appeals**

NO. 2002-CA-001339-MR

HOLLIS CRAIG TURNER

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT  
HONORABLE DOUGHLAS M. GEORGE, JUDGE  
CIVIL ACTION NO. 02-CI-00048

MARION ADJUSTMENT CENTER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HUDDLESTON, PAISLEY and TACKETT, Judges.

HUDDLESTON, Judge: Hollis Craig Turner appeals from an order dismissing his declaratory judgment action against the Marion Adjustment Center and the Department of Corrections.<sup>1</sup> Turner claims that his rights were violated by the revocation of accumulated "good time" following his plea of guilty to a charge of escape in the second degree.

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<sup>1</sup> Turner did not name the Department of Corrections in his notice of appeal. Hence, the Department is not a party to this appeal. Given that Turner is a pro se litigant, we have nonetheless elected to address the issues he raises on appeal.

On August 26, 1998, Turner, who was incarcerated at the Marion Adjustment Center, escaped from custody. After being apprehended on October 19, 2000, Turner entered a plea of guilty to the criminal charge of escape in the second degree on August 8, 2001, and was sentenced to two years' imprisonment to be served concurrently with his existing sentence. A disciplinary charge stemming from his escape resulted in Turner's loss of an accumulated six months' "good time" credit. This forfeiture occurred on August 28, 2001, without a formal hearing by prison authorities.

Following his loss of good time credit, Turner filed a petition in Marion Circuit Court seeking a declaration that his rights had been violated by prison authorities. He argued that a hearing should have been held prior to the revocation of his accumulated good time credit, and that the failure to do so amounted to a violation of various constitutional rights.<sup>2</sup>

The circuit court relied on O'Dea v. Clark<sup>3</sup> to hold that because Turner pled guilty to the underlying criminal charge, he waived any challenge to the subsequently-imposed administrative punishment. In O'Dea, we said that when a defendant pleads guilty to a charge arising out of an offense

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<sup>2</sup> Although Turner's brief lacks clarity, we have addressed his arguments insofar as we understand them.

<sup>3</sup> Ky. App., 883 S.W.2d 888 (1994).

that occurred while he is incarcerated, he waives the right to challenge the imposition of administrative punishment resulting from the same offense.<sup>4</sup>

While O'Dea is binding authority dispositive of the case at hand,<sup>5</sup> its reasoning is not well explained. An examination of the authorities upon which the O'Dea court relied is helpful not only for a better understanding of the law, but to more thoroughly address the contentions Turner raises.

Turner's guilty plea obviated the need for an evidentiary hearing by prison officials. "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply."<sup>6</sup> However, once a state has created a protected liberty interest, due process requires that the state not subject prisoners to a deprivation of that interest arbitrarily.<sup>7</sup> There must be "some evidence" on which to base a prison disciplinary decision,<sup>8</sup> and such evidence must at least be reliable.<sup>9</sup>

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<sup>4</sup> Id. at 891.

<sup>5</sup> See Supreme Court Rules (SCR) 1.030(7)(d).

<sup>6</sup> Wolff v. McDonnell, 418 U.S. 539, 556, 94 S. Ct. 2963, 41 L. Ed. 2d 935, 951 (1974). See also Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995).

<sup>7</sup> Id.

<sup>8</sup> Superintendent, Massachusetts Correctional Institution at Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985).

Implicit in the reasoning of O'Dea, as well as that of the prison disciplinary authorities in this case, is that when a defendant pleads guilty to a criminal charge (for which he also faces administrative discipline), his guilty plea provides facts sufficient to impose criminal punishment beyond a reasonable doubt. Because the "some evidence" standard required for the imposition of prison discipline is considerably lower than the standard required for a criminal conviction, whatever satisfies the greater burden necessarily satisfies the lesser. Because a guilty plea satisfies the Commonwealth's burden of proof beyond a reasonable doubt in a criminal case,<sup>10</sup> it also satisfies the burden for the imposition of prison discipline. Thus, the circuit court correctly ruled that the prison disciplinary action in this case did not violate Turner's due process rights.

Turner's second argument, that he should have been provided an attorney for the purposes of the prison disciplinary proceeding, has been rejected by the United States Supreme Court:

The insertion of counsel into the disciplinary process would inevitably give the proceedings a more adversary cast and tend to reduce

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<sup>9</sup> Byerly v. Ashley, Ky. App., 825 S.W.2d 286, 288 (1991).

<sup>10</sup> See, e.g., Corbett v. Commonwealth, Ky., 717 S.W.2d 831 (1986); Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726 (1986).

their utility as a means to further correctional goals. There would also be delay and very practical problems in providing counsel in sufficient numbers at the time and place where hearings are to be held. At this stage of the development of these procedures we are not prepared to hold that inmates have a right to either retained or appointed counsel in disciplinary proceedings.<sup>11</sup>

Clearly, Turner was not entitled to appointed counsel for purposes of the prison disciplinary proceeding.

Turner's argument that prison discipline violated his right not to be subjected to double jeopardy likewise fails. As Kentucky's highest court said in Yager v. Commonwealth:<sup>12</sup>

One of the factors of legal jeopardy is being placed on trial before a court of competent jurisdiction on an indictment or information sufficient to sustain a conviction.[<sup>13</sup>] The punishment meted to [Turner] by the prison officials was a disciplinary measure which does not constitute legal jeopardy.

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<sup>11</sup> Wolff, supra, n. 6, 418 U.S. at 570, 41 L. Ed. 2d at 959, reaffirmed Baxter v. Palmigiano, 425 U.S. 308, 315, 96 S. Ct. 1551, 47 L. Ed. 2d 810, 819 (1976).

<sup>12</sup> Ky., 407 S.W.2d 413, 416 (1966).

<sup>13</sup> Hunt v. Commonwealth, Ky., 338 S.W.2d 912 (1960); Hughes v. Commonwealth, 131 Ky. 502, 115 S.W. 744 (1909).

Under Wolff and Yager, the disciplinary action which Turner faced was not a criminal proceeding. Accordingly, the revocation of good time credits in no way implicated Turner's double jeopardy rights.

Finally, Turner claims that the delay by prison authorities in revoking his good time credits violated his Sixth Amendment right to a speedy trial. Speedy trial protections are only invoked when a suspect is formally indicted, and apply only to criminal prosecutions.<sup>14</sup> As we have said, this case did not involve a criminal prosecution, so Sixth Amendment protections do not apply.

Furthermore, the facts of the case do not draw the reasonableness of the prison authorities' action into question. By waiting for the resolution of the criminal case dealing with Turner's escape, prison officials ensured a more reliable assessment of the underlying facts as ascertained through the prosecution. Turner has not challenged the speed of the criminal action against him; indeed, we have not been pointed to any instance in either the criminal prosecution or the prison disciplinary action where Turner asserted his right to a more speedy proceeding or pointed to any prejudice resulting from

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<sup>14</sup> United States v. Marion, 404 U.S. 307, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971).

delay.<sup>15</sup> Many of the policy reasons for encouraging speedy resolution of criminal trials such as interference with a defendant's liberty, disruption in employment and curtailment of associations simply do not apply in a case such as this where the defendant is and will continue to be incarcerated regardless of the resolution of a criminal charge unrelated to a sentence already imposed on the defendant.

The action undertaken by prison authorities in this case did not violate any of Turner's rights. Thus, the order dismissing Turner's complaint seeking declaratory relief is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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<sup>15</sup> See Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).