

RENDERED: SEPTEMBER 26, 2003; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002139-MR

MAURICE DOUGLAS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 02-CI-00110

T. BARNES, J. FOY, AND
J. R. YOUNGBLOOD

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND TACKETT, JUDGES.

TACKETT, JUDGE: Maurice Douglas appeals, *pro se*, from an order of the Lyon Circuit Court denying his motion for declaratory judgment and injunctive relief. Douglas was found guilty in a hearing before the adjustment committee of assaulting a female employee at the Kentucky State Penitentiary in Eddyville where he was incarcerated. After reviewing the record, we conclude that Douglas received adequate due process and affirm.

On October 6, 1991, Marina Galusha wrote a report alleging that Douglas raked his hand across her buttocks while exiting the library that day. A hearing was held on October 14, at which Douglas was represented by an inmate legal aide and Galusha testified as a witness. The disciplinary committee found Douglas guilty "based on the facts as witnessed by Ms. Galusha" and imposed a penalty of 180 days disciplinary segregation and the loss of 360 days non-restorable good time. Douglas was informed that he had fifteen days from the date of the hearing to appeal to the Warden. On November 5, 1991, the Warden concurred with the adjustment committee's decision because Douglas failed to submit an appeal.

Douglas waited over a decade until June 21, 2002, to file his petition for a declaratory judgment and injunctive relief with the circuit court. He alleged that he had in fact appealed the adjustment committee's decision to the Warden. Nothing in the record indicates that he did so, however, and Douglas does not deny receiving a copy of the Warden's November 5, 1991 decision stating that he failed to file an appeal. The circuit court found that Douglas had received due process, pursuant to the United States Supreme Court's decision in Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) and its progeny, and denied Douglas' motion. Subsequently, Douglas filed a motion to reconsider, claiming that the circuit

court failed to make adequate findings supporting its decision that the adjustment committee's procedure complied with the requirements in Wolff. The circuit court denied this motion and made findings that the committee identified the evidence relied on in determining Douglas' guilt and specified its reasoning for punishing his conduct. In addition, the circuit court stated that Douglas' action was time barred by the statute of limitations. This appeal followed.

Douglas argues that the circuit court erred in finding that the adjustment committee's procedures afforded him due process. The prison disciplinary board stated that its decision was "based on the facts as witnessed by Ms. Galusha" without any elaboration as to what those facts were. In her report of the offense, Galusha wrote that Douglas "raked my buttock from the left side to the right side with his hand." "Where a prison disciplinary hearing may result in the loss of good time credits, Wolff held that the inmate must receive: (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. 418 U.S., at 563-567." Superintendent, Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454; 105 S.Ct. 2768,

2786; L.Ed.2d 356, 363-4 (1985). Douglas signed the disciplinary investigation and write-up report containing Galusha's allegation against him, asked for an inmate legal aide, and requested that Galusha be called as a witness at the disciplinary hearing. The adjustment committee made a written finding that Douglas was guilty based on Galusha's reported observations and that the punishment was necessary to "attempt to control this type of behavior of this inmate." We have previously determined that a decision reached by a prison disciplinary board will not be disturbed on appeal as long as it is supported by some evidence. Smith v. O'Dea, Ky. App., 839 S.W.2d 353 (1997). Douglas has failed to establish that the procedure followed by the adjustment committee did not provide him with due process in that he both had notice of the disciplinary charge and was allowed to examine Galusha as a witness, and finally received written notice that the adjustment committee found him guilty based on her observations.

Douglas next contends that the trial court erred in determining that his motion for declaratory relief is time barred. Although we note that over a decade elapsed between the time of the adjustment committee's hearing and the filing of Douglas' motion with the circuit court, it is not necessary to reach the merits of this argument because we have already

ascertained that Douglas received due process. Therefore, the judgment of the Lyon Circuit Court is affirmed.

ALL CONCUR.

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