

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002147-MR

DONALD MOORE

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 02-CI-00180

DON BATTLE, MIKE SMITH, FRED
WILSON, KENNETH WILLIAMS, JOHN
UNDERWOOD AND BARBARA GREEN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BAKER, GUIDUGLI, AND PAISLEY, JUDGES.

BAKER, JUDGE: Donald Moore brings this *pro se* appeal from a September, 19, 2002, order of the Morgan Circuit Court. We affirm.

Moore is currently an inmate at the Eastern Kentucky Correctional Complex. Moore was allegedly a witness to an inmate assault but refused to cooperate in the investigation; consequently, Moore was cited for hindering an investigation.

After an adjustment hearing, Moore was found guilty of a lesser amended charge, "Interfering with an Employee in the Performance of his Duty," and penalized fifteen days in disciplinary segregation. This penalty was upheld on appeal to the warden's designee, Deputy Warden Don Battle.

Moore then filed a Petition for Declaratory Judgment in the Morgan Circuit Court, alleging violation of his Fourteenth, Eighth and Fifth Amendment rights under the United States Constitution. Moore specifically sought expungment of the disciplinary report from his institutional file and \$20,000.00 in punitive damages against each of the individual appellees for a total of \$120,000.00. After review of Moore's petition, Warden John Motley voluntarily expunged the disciplinary report. Upon a Motion to Dismiss, the Morgan Circuit Court dismissed the action by order dated September 19, 2002. This appeal follows.

Moore contends that the circuit court erroneously failed to award him "damages." In his brief, Moore specifically argues:

The Appellees are liable for damages that the Appellant requested, due to their voluntary dismissal of the disciplinary report. The dismissal of the disciplinary report leaves the Appellant and the Court with the realization that an assault did not occur and they did violate the Appellant's rights.

Brief for Appellant at 5. However, in another part of his brief, Moore maintains:

The Appellees wanted the Appellant to become a RAT by telling what he knew about an assault on inmate Jarboe, while the Appellant kept telling the staff that he did not see any assault and he has nothing to say. In the prison setting, if you tell on some body [sic] to the staff you are considered to be a RAT and this creates an atmosphere of fear, intimidation, dishonesty and sometimes violence. In 2001, at Luther Lockett Correctional Complex, an inmate KILLED another inmate for ratting on him to the staff. The Appellees was [sic] trying to put the Appellant into the same type of situation and because he would not become a RAT he was found guilty of a disciplinary report

Brief for Appellant at 1-2. We perceive Moore's assertions to be contradictory. On the one hand, he argues that his rights were violated because an assault did not occur; on the other hand, he argues that his rights were violated by attempting to coerce him to "rat" on another inmate. In any event, we must agree with the circuit court that Moore has failed to identify any evidence of bad faith in the disciplinary process and has failed to offer evidence to substantiate a constitutional violation.

Upon the whole, we are of the opinion that the circuit court did not err by dismissing Moore's Petition for Declaration of Rights.

For the foregoing reasons, the order of the Morgan
Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT - *Pro Se*:

Donald Moore
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Emily Dennis
Rebecca Baylous
Department of Corrections
Frankfort, KY