

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-002465-MR

PATRICK BRANDON

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE PAUL W. ROSENBLUM, JUDGE  
ACTION NO. 02-CI-00512

LARRY CHANDLER, LT. C. CLARK,  
LISA RICKETTS AND LT. L. VOIROL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BAKER, COMBS, AND SCHRODER, JUDGES.

BAKER, JUDGE: Patrick Brandon brings this appeal from a  
September 9, 2002, Opinion and Order of the Oldham Circuit  
Court. We affirm.

While an inmate at the Luther Lockett Correctional  
Complex, appellant was charged with the offense of assault or  
physical action against an employee. Following a prison  
disciplinary hearing, the adjustment committee hearing officer  
found appellant guilty of the charged offense. He was assigned

to disciplinary segregation for 180 days and ordered a forfeiture of 720 days non-restorable good time credits. The warden affirmed the hearing officer's conclusion. Consequently, appellant filed a petition for declaratory judgment in the Oldham Circuit Court. Therein, he claimed to have been deprived of procedural due process and equal protection. In an Opinion and Order entered September 19, 2002, the circuit court dismissed appellant's petition for declaratory judgment, thus precipitating this appeal.

Appellant contends that the circuit court committed error by concluding that there was sufficient evidence to support the adjustment committee's finding of guilt. We disagree.

In a prison disciplinary setting, due process requirements are met "if some evidence supports the decision by the prison disciplinary board." Superintendent, Massachusetts Correctional Institute at Walpole v. Hill, 472 U.S. 445, 455; 105 S. Ct. 2768, 86 L. Ed. 2d 356, (1985). In this case, we believe the testimony of the victim constituted "some evidence" to support the adjustment committee's finding of guilt. Indeed, the victim testified that appellant bit her on the right shoulder while she worked in the canteen area. We, thus, reject appellant's assertion that there was insufficient evidence to support a finding of guilt.

Appellant also asserts that his "statement was not sufficient to establish guilt of charge or offense because it pointed to a clearly different rule violation." The circuit court concluded that "the record contained sufficient evidence to support the finding of guilt. By his own description, Mr. Brandon's actions come within the scope of physical action against an employee." Opinion and Order at 4.

Appellant apparently testified that "mockingly growled at . . . [victim] and in so doing the top part of his upper front tooth, near the gum area, ever so slightly brushed against her arm." Opinion and Order at 1. Whether appellant's testimony was sufficient to support the finding of guilt we do not reach, we view the victim's testimony as sufficient to support the adjustment committee's finding of guilt. In sum, we simply believe that the victim's testimony satisfied "some reliable evidence" standard to support the finding of guilt by the adjustment committee.

Appellant also maintains that the adjustment committee improperly denied his request to have one officer Terrance Graves testify as an exculpatory witness. He contends that he was entitled to call witnesses upon his behalf and that the denial of this right constituted a violation of his procedural due process rights. In this issue, we must agree with the circuit court. The circuit court concluded, and we agree:

[I]n his report, the hearing officer stated that he denied admission of the interrogatories because the witness had "no direct knowledge of the incident." It is within the discretion of the hearing officer to deny the admission of testimony which "is irrelevant to the issues." Corrections Policy and Procedure 15.6(VI)(D)(2)(f). The hearing officer made written justification for the denial as required by Corrections Policy and Procedure.

Opinion and Order at 3. As the witness had no direct knowledge of the incident, we believe that it was not an abuse of discretion for the hearing officer to deny admission of the interrogatories as irrelevant.

Appellant further argues that he was "ineffectively assisted by a fellow inmate in preparing his petition for declaratory judgment." We do not believe appellant may properly bring an ineffective assistance of counsel claim against a fellow inmate.

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

ALL CONCUR.

BRIEF FOR APPELLANT - *pro se*:

Patrick Brandon  
Eddyville, Kentucky

BRIEF FOR APPELLEES:

John T. Damron  
Department of Corrections  
Frankfort, Kentucky