

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002561-MR

TIMOTHY FANCHER

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 02-CI-00267

WILLIS CALLAHAN;
GEORGE MILLION;
JOHN MOTLEY; AND
JOHN UNDERWOOD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. Timothy Fancher ("Fancher") appeals from an order of the Morgan Circuit Court dismissing his action alleging that he suffered a violation of constitutional rights arising from two disciplinary proceedings conducted at the Eastern Kentucky Correctional Complex ("EKCC"). We affirm.

Fancher was at all relevant times an inmate at EKCC. On May 8, 2002, the prison mailroom received an envelope addressed to Fancher. Inspection of the envelope revealed that it contained a small quantity of marijuana and two rolling papers. Fancher was charged with "Possession or Promoting of Dangerous Contraband/Conspiracy with another to commit the offense", a category VII-4 inchoate violation of Corrections Policy and Procedure.

A hearing on the charge was conducted, and Fancher was found guilty and assigned to 45 days of disciplinary segregation. Fancher appealed to Warden George Million, who sustained the finding.

On June 5, 2002, Fancher's cell was subjected to a random search. An officer found a cigarette, two matches, and a striker under a shelf. Fancher was charged with "Smuggling of Contraband within the Institution", a category IV-5 violation of Corrections Policy and Procedure. Another hearing ensued, and Fancher was found guilty and assigned 45 additional days of disciplinary segregation. Warden John Motley sustained the findings.

It appears that sometime thereafter, Fancher filed a petition in Morgan Circuit Court seeking a declaratory judgment.¹ The petition apparently sought a dismissal of the disciplinary

¹ The petition is not contained in the record.

charges and expungement of the findings, as well as compensatory and punitive damages in the amount of \$60,000.

On November 15, 2002, the Department of Corrections ("the Department") filed a motion to dismiss the petition. As a basis for the motion, the Department argued that Fancher failed to state a claim for which relief could be granted because he did not sustain the loss of any constitutionally protected liberty interest. The Morgan Circuit Court was persuaded by this argument, and rendered an order on November 22, 2002, dismissing the action. This appeal followed.

Fancher now argues that the circuit court erred in dismissing his petition. He maintains that the two disciplinary hearings to which he was subjected were not supported by any evidence, and that the assignment to disciplinary segregation constituted a loss of protected liberty interests as secured by the 5th and 14th Amendments to the United States Constitution and various provisions of the Kentucky Constitution. He seeks an order reversing the trial court's order of dismissal with instructions that a judgment against the respondents be entered in the amount of \$60,000.

We have closely examined Fancher's argument, and find no basis for tampering with the order on appeal. His claim of error centers on his assertion that he was denied certain constitutionally protected liberty interests when he was

assigned to disciplinary segregation. The general rule is that an inmate has no constitutionally protected liberty interest to remain in a prison's general population or any particular part of the institution. Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). Such interests may arise, if at all, by operation of the Due Process Clause itself, or pursuant to state law. Id., citing Meachum v. Fano, 427 U.S. 215, 223-227, 96 S.Ct. 2532, 2537-40, 49 L.Ed.2d 451 (1976).

In the matter at bar, the trial court opined that Fancher failed to demonstrate the loss of any constitutionally protect liberty interest that would have given rise to due process rights. Hewitt and Meachum support this conclusion. We also agree with the trial court's conclusion that even though no protected interest was at stake, he nevertheless received procedural and substantive due process as part of the institutional disciplinary hearing including written notice of the violation, a written statement of the fact-finder as to the evidence relied upon, a hearing, and an internal appeal. See generally, Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

Fancher also maintains that no evidence was offered at the hearing to support the assertion that he committed the violations, and that accordingly the committee should have ruled in his favor. We are not persuaded by this argument. Only

"some evidence" is required of an inmate's guilt.

Superintendent v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) (" . . . the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board."); Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). In the matter at bar, one may draw the inference from the facts that Fancher would not have received marijuana in the mail absent some degree of complicity with the sender. While this evidence is not weighty, it may be properly characterized as "any evidence" and thus satisfies Hill.

Similarly, it is uncontroverted that a cigarette and matches were found in Fancher's cell. Again, this constitutes "any evidence" sufficient to sustain the results of the hearing. Id.

For the foregoing reasons, we affirm the order the Morgan Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Timothy W. Doodle Fancher
West Liberty, KY