

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002637-MR

EDDIE PERRY

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 02-CI-00488

DOUG FLETCHER,
(COMMONWEALTH OF KENTUCKY)

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, COMBS, AND TACKETT, JUDGES.

TACKETT, JUDGE: Eddie Perry appeals from an order of the Bell Circuit Court dismissing his petition for a declaration of rights. After reviewing the case, we determine that Perry received sufficient due process in the handling of his prison disciplinary action and, accordingly, we affirm.

Perry is currently serving a fifteen-year sentence for manslaughter and bail jumping. During his incarceration, Perry was placed at the Bell County Forestry Camp (BCFC) located in Pineville, Kentucky, where he was disciplined for possession of

dangerous contraband after a toothbrush with a razor blade melted into its handle was found under his mattress. The adjustment committee assessed a penalty of forfeiture of sixty days good time earned which was upheld on review by the warden. Perry subsequently petitioned the circuit court for a declaration of rights. The circuit court, concluding that Perry had received all of the due process to which he was entitled, dismissed the action and this appeal followed.

On appeal, Perry argues that the adjustment committee failed to find, by a preponderance of the evidence, that he had factual or constructive possession of the contraband. The United States Supreme Court has determined that an inmate in a prison disciplinary action is entitled to receive written notice of the charges against him, to present evidence in his defense and to have the fact finder issue a written statement of the evidence relied upon and the reason for any disciplinary action taken. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 49 L.Ed.2d 935 (1994). Perry claims that an understanding of the events leading up to the contraband charge is essential to determining his guilt; therefore, we will briefly recite them. Upon arrival at BCFC, Perry claims that the inmates in charge of the laundry attempted to charge him for having his clothes washed in violation of Department of Corrections policies. When Perry refused to pay, his laundry was discarded, prison

officials became involved in the search for his clothes and Perry was labeled a "rat" by other inmates. After these events, Perry was assigned to work in the administration building where he had access to the canteen and office supplies. Other inmates allegedly approached Perry and asked him to cooperate in a scheme to steal items from the administration building and sell them to the prison population. Again Perry refused and made enemies within the inmate population.

Eventually, Perry was involved in a fight with another inmate which he contends resulted from being attacked. He was placed in segregation while prison officials investigated the incident. Perry was returned to the general population after he and the other inmate involved in the fight signed a non-conflict agreement. He was assigned to an open dorm containing numerous bunk beds. The homemade knife was found under his mattress that same day during a random search. Perry contends that the contraband was planted by another inmate to frame him and that several of his enemies at BCFC were assigned to the same dorm with him.

Corrections Officer Lowell Partin wrote up the report charging Perry with possession of dangerous contraband in which he stated that he was performing a random inspection of inmates' bed areas. The report from the adjustment committee hearing states that the testimony of the reporting officer was crucial

to the committee's decision. At the hearing, Partin again stated that the search of Perry's bunk was a random shakedown and that no one had directed him to Perry as a search target. Clearly, the committee determined that Partin's testimony mitigated against Perry's defense of a set up. Moreover, the report also gave the reason for the penalty assessed which was to control inmate behavior.

The standard of review in these cases is whether some evidence supports the decision of the prison disciplinary body. Superintendent Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); Stanford v. Parker, Ky. App., 949 S.W.2d 616 (1996); Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). The reporting officer testified that he found a toothbrush with a razor blade melted into its handle under Perry's bunk during a random bed inspection. The prison adjustment committee relied on this testimony to determine that Perry was guilty of violating rules against possession of dangerous contraband. Perry received written notice of the charges against him, a hearing with the opportunity to defend himself against the charge, and a written report of the evidence relied on by the committee and the reason for assessing a disciplinary penalty against him. Thus, we are unable to say that the circuit court erred in concluding that

Perry received all of the due process to which he was entitled under Wolff.

For the foregoing reasons, the judgment of the Bell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Valerie Marshall
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