

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000191-MR

CRAIG JONES

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 01-CI-00468

MICHAEL FERGUSON, SHEILA COBB,
and SONNY PARTIN

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BAKER, COMBS, and SCHRODER, Judges.

COMBS, JUDGE. Craig Jones has appealed, *pro se*, from an order of the Bell Circuit Court that dismissed his petition for declaration of rights filed pursuant to Kentucky Revised Statutes (KRS) 418.040. We conclude that the circuit court did not err; thus, we affirm.

On August 30, 2001, Jones was an inmate at Bell County Forestry Camp, a minimum security facility, when a disciplinary report was filed against him. He was charged with "possession

of dangerous contraband" after a search of his bed revealed a homemade weapon (an eight-inch stick with two razor blades glued to the end) concealed under his mattress. The search was conducted at 1:15 a.m. following a report to camp officials by way of an anonymous note that Jones was concealing a weapon.

The charge was investigated, and a hearing was held before an adjustment committee. Jones waived his right to call witnesses at the hearing and waived assistance from a legal aide. Jones denied having possession of the weapon and claimed that he had been the victim of a set-up. He was found guilty as charged and was sentenced to forfeiture of 180 days of good-time credit. Jones appealed to the warden, who affirmed the decision of the committee. He was subsequently transferred to Northpoint Training Center, a medium-security facility.

Jones filed a petition for declaration of rights in Bell Circuit Court challenging the disciplinary action. He alleged that his due process rights had been violated and that the officers involved had failed to observe mandatory procedural guidelines. Jones argued that the adjustment committee had deprived him of due process by failing to prepare adequate findings to support its conclusion that he was guilty of the charged offense and by failing to base that decision on substantial evidence. He also claimed that corrections officers had failed to demonstrate the reliability of the informant and

that they had failed to secure the physical evidence properly. The circuit court concluded that the disciplinary decision was based on sufficient evidence and found no violation of Jones's due process rights. This appeal followed.

Declaratory judgment actions involving inmate disciplinary procedures entail review by a circuit court of the adjudication of the administrative agency. The court must determine whether the inmate's petition and supporting materials raise specific, genuine issues of material fact sufficient to overcome a presumption that the Department of Corrections acted properly. See Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997).

An inmate may not be stripped of earned statutory good-time credit without a meaningful opportunity to challenge the deprivation. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, inmates are entitled only to minimum requirements of procedural due process, including: (1) advance written notice of disciplinary charges; (2) the opportunity to call witnesses and to present documentary evidence consistent with institutional safety and correctional goals; (3) a written statement of the evidence relied upon and the reasons for the disciplinary action; and (4) an impartial decision-making tribunal. Id.

On August 30, 2001, Jones received a disciplinary report that provided him with advance written notice of the

charge and the evidence against him. A proper hearing was held the following day. The adjustment committee prepared a disciplinary report as required by Kentucky Correctional Policies and Procedures 15.6, finding that Jones had been in possession of dangerous contraband. The evidence relied upon consisted of the incident itself and the investigation reports in which a correctional officer stated that he had "discovered an anonymous [sic] note stating that inmate Craig Jones had a homemade knife under his mattress" and that a shakedown of the area of Jones's bed produced a homemade weapon under the mattress. Jones's statement denying ownership of the weapon was also considered. The disciplinary report advised Jones that the penalty was being imposed in order to control his behavior.

Jones argues that the trial court erred by concluding that he had not been deprived of due process because the findings of fact of the adjustment committee were legally insufficient. He contends that the committee's written statement fails to mention what evidence the committee specifically relied upon in reaching its conclusion. We find no such error. The disciplinary report plainly indicated that the committee members considered the incident reports and Jones's statements before reaching its decision. The correctional officer had responded to an anonymous tip and discovered the weapon in an area allocated solely to Jones. The investigating

officer independently verified these facts. The adjustment committee was entitled to rely on the officers' reports. The committee prepared sufficient findings of fact indicating that its members were persuaded by the evidence that Jones had been in possession of dangerous contraband.

In prison disciplinary proceedings, due process requires that a disciplinary committee's decision to impose sanctions for violations of prison rules must only be supported by "some evidence." Stanford v. Parker, Ky. App., 949 S.W.2d 616, 617 (1996). We may not re-examine the entire record or undertake our independent assessment of the credibility of witnesses; nor may we weigh the evidence anew. We conclude that the statement by the correctional officer that he discovered a weapon under Jones's mattress was sufficient evidence to support the disciplinary action taken. We cannot agree that Jones was deprived of his right to due process.

Jones also argues that the court erred by failing to conclude that he had been denied due process since the adjustment committee had failed to follow its own internal policies and procedures. He contends that the information provided by the anonymous informant was "the essence of the adjustment committee's findings for no other evidence was presented to link Jones with possession of this contraband." Appellant's brief at p. 3. Since the reliability of the

anonymous informant was never properly established, Jones argues that the information should not have been considered by the committee.

We do not agree. Jones's right to due process was not compromised because the adjustment committee did not base its decision on the informant's tip to the correctional officer. It relied upon the observations and investigation of the corrections officers. Their investigation alone produced the evidence used against Jones. Therefore, the committee was not required to establish the reliability of the anonymous tipster pursuant to its administrative policies and procedures. Jones's contention that the officers failed to account properly for the evidence through a chain-of-custody form is without merit since a proper form is included in the record.

The order of the Bell Circuit Court dismissing the petition for declaratory relief is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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