

RENDERED: March 11, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000258-MR

ALPHONZO MORTON

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JR., JUDGE
ACTION NO. 01-CI-00217

BRAD ROSE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND VANMETER, JUDGES; HUDDLESTON, SENIOR JUDGE.¹
BARBER, JUDGE: Appellant, Alphonzo Morton (Morton), appeals Pro
Se the Lee Circuit Court's denial of his motion for declaration
of rights. We affirm the circuit court's ruling.

In his appeal, Morton named as respondent in his
Notice Sgt. Brad Rose, Et. Al. Et. Al. al is not sufficient to

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

name additional parties to an appeal. The Appellee failed to file a brief apprising this Court of his position. Appellee further failed to file documents with this Court notifying the Court that no brief was necessary.

The record shows that while incarcerated, Morton was charged with two disciplinary violations of Corrections Policy and Procedure (C.P.P.). Morton was cited for fighting, and for possession of contraband. The incidents took place on December 18, 2002. An incident investigation and report were made the following day. Sgt. Brad Rose, a Department of Corrections employee, was the officer investigating the incidents. At the time of the investigation Morton requested assistance from a particular resident legal aide. Morton's request was denied. Morton was provided assistance by a different legal aide. Morton alleges that the incident report filed by Sgt. Rose failed to include relevant information regarding his actions, including his assertion that he did not instigate the fight, and that Morton did not strike the other inmate at anytime. The record shows that Morton was injured in the altercation. The report does state that Morton claimed to have been attacked, and that he did not "throw any punches," but that he grabbed a can of chili to defend himself.

On December 18, 2002, Morton was charged with a second disciplinary violation for possession of dangerous contraband.

The contraband found in Morton's cell was a lock inside a sock. Morton contends that he was offered a legal aide, but denied his choice of legal aide. The time given in the report for this incident was 2320 hours, twenty minutes earlier than the time given for the fighting incident. Morton asserts that the lock was not part of the fight, since the incident report lists it as having been discovered prior to the fight. Portions of the record state that Morton claimed that the lock was used by Inmate Jones, rather than being used by him. The report indicates that Morton claimed the lock was his at the time it was found. Morton denies that he admitted ownership of the lock.

A hearing was held before the Adjustment Committee. The Committee found Morton guilty of both offenses, and Morton was assigned to sixty days in disciplinary segregation. Morton lost sixty days of "good time" as a result of this ruling. The Disciplinary Committee ruled that Morton's statement that Jones attacked him, and Morton's admission that he grabbed a can of chili and tried to hit Jones with it were sufficient to prove him guilty on the charge of fighting. Warden David Gilpin affirmed the ruling of the Disciplinary Committee, holding that sufficient evidence of fighting existed to affirm the ruling regarding the incident. With regard to the contraband found on Morton's bed, the Committee ruled that Morton had ownership or

control over it. On appeal, the Warden stated that as the contraband was discovered in Morton's bed area, he was liable for it, and affirmed the Committee's findings. Morton then filed a motion for Declaratory Relief in the circuit court. The Lee Circuit Court granted summary judgment in favor of the Appellees.

Morton claims that the incident reports contain inaccuracies and errors, and that this deprived him of a fair hearing. He asserts that the statements attributed to him in the incident report are incorrect. Morton further asserts that he was given insufficient time and assistance to prepare his case for the hearing. Morton claims that he was denied the choice of two legal aides, but was assigned an aide he did not want. The record shows that only one legal aide was assigned to the unit Morton was in, and that under those circumstances, no choice of legal aides was possible. The record does not contain any objection to the assigned legal aide prior to the hearing. We find no impropriety in the assignment of the only available legal aide under such circumstances.

The incident report for fighting is dated 12/18/02 at 2340 hours. The report contains a statement from Captain Archie Moore to the effect that Morton admitted the altercation, and stated that Inmate Jones had entered the dorm and begun to hit him. Morton had injuries to his left eye and to the back of his

head. The incident report contains a statement by Morton to the effect that Jones attacked him, and that Morton did not throw a punch. Morton also contended that Inmate Jones had been pushing him and hitting him for a long time and that he was fearful of the threats by Inmate Jones. Jones is not reported to have suffered any injuries in the altercation. The Disciplinary Report Form Part II - Hearing/Appeal states that Morton testified that Jones attacked him, and that he was defending himself. This form also states that Morton testified that he grabbed a can of chili and attempted to hit Inmate Jones with it.

The incident report for the contraband is dated 12/18/02 at 2320 hours. Staff Member James Houston made a statement to the effect that he was called to clean up a blood spill in Morton's cell, and found a lock in a sock lying in the center of Morton's bed. Morton stated in the record that he had heard that Inmate Jones had a lock in a sock and that when he found a lock in a sock in his cell, he placed it on his bed as evidence. The record contains Morton's statement that he did not own the lock, and did not put it in the sock. The incident report claims that Morton admitted to placing the lock in the sock himself, and placing it on his bed in preparation for the attack by Jones. An affidavit in the record sworn to by another

inmate states that Jones arrived with a lock in a sock when he came to attack Morton.

Morton contends that the circuit court abused its discretion by entering summary judgment. He argues that loss of his good time constituted a due process violation, and that because of this, he was entitled to a hearing on his motion.

Morton argues that genuine issues of material facts prohibited entry of summary judgment. The Adjustment Committee is required to have "some evidence" supporting its findings. Superintendent v. Hill, 472 U.S. 445, 455 (1985). A reviewing court must determine whether "there is any evidence in the record that could support the conclusion reached by the disciplinary board." Id., at 455-56. Where such evidence exists, then the Committee's determination may be upheld. Summary judgment may be granted where "the moving party shows that the adverse party could not prevail under any circumstances." Brown Foundation v. St. Paul Ins. Co., 814 S.W.2d 273, 277 (1991). The Circuit Court properly entered summary judgment in favor of Appellee.

Morton claims that the court erred by denying his post-judgment request that the court enter findings of fact and conclusions of law. In an appeal of a disciplinary committee or warden's ruling, "the court seeks not to form its own judgment but, with due deference, to ensure that the agency's judgment

comports with the legal restrictions applicable to it." Smith v. O'Dea, 939 S.W.2d 353, 355 (Ky.App. 1997). Legal conclusions or findings are not necessary when a court is granting summary judgment on an administrative adjudication. Wilson v. Southward Inv. Co. #1, 675 S.W.2d 10, 11 (Ky.App. 1984). It was not reversible error to refuse to enter findings of fact.

For the foregoing reasons, the Lee Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Alphonzo R. Morton, Pro Se
Central City, Kentucky

BRIEF FOR APPELLEE:

No Brief Filed.