

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000142-MR

DOUGLAS VICKERS

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 03-CI-00492

WILLIAM C. SEABOLD, WARDEN;
BILL SEARCY; CATHY BUCK; and
J. MERTZ

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Douglas Vickers appeals from an order of the Oldham Circuit Court dismissing his petition for declaration of rights. The case involves a prison disciplinary action taken by prison authorities against Vickers, a prison inmate. Vickers raised numerous arguments before the circuit court, all of which were rejected and all of which we likewise reject. Therefore, we affirm.

Vickers is an inmate at the Kentucky State Reformatory (KSR). In the early morning hours of May 22, 2003, the prison authorities ordered him to give a urine sample. The specimen testing indicated marijuana use. A disciplinary report was issued charging Vickers with unauthorized use of drugs, and Vickers had a hearing before an adjustment committee at the prison. The committee found Vickers guilty of the offense and set his punishment at 45 days in disciplinary segregation. Further, he was ordered to pay restitution for the drug test. His appeal to the warden was denied.

Vickers subsequently filed a petition for declaration of rights in the Oldham Circuit Court. Therein, he raised numerous questions challenging the disciplinary action against him. He also filed a lengthy memorandum of law, citing legal authorities, in support of his petition. The respondents named in his petition were the prison warden and other prison officials. The respondents responded to Vickers' petition and moved the court to dismiss it. In a six-page order entered on December 4, 2003, the court entered an order granting the respondents' motion and dismissing the petition. This appeal by Vickers followed.

In this appeal Vickers reiterates thirteen alleged due process violations that he argued to the trial court. He alleges that his due process rights were violated in that: 1)

KSR is operating a prison informant system in violation of its regulations; 2) the disciplinary report was not a clear, concise, and accurate account of the incident; 3) the reliability of the confidential informant was not determined; 4) the change of custody of the urine sample was not properly maintained; 5) the specimen test results erroneously reported the testing time; 6) the litigation package summary failed to accurately depict who verified and certified the test results and who handled the specimen at the testing laboratory; 7) the laboratory's change of custody is illegible as to who handled the specimen; 8) the test results were not signed; 9) a testing batch's test results were not reported; 10) the adjustment committee failed to consider all the evidence; 11) the adjustment committee imposed an undetermined amount of restitution as a penalty; 12) he was deprived of legal assistance from a legal aide of his choice; and 13) cumulative error.

The circuit court concluded that Vickers did not have a viable due process claim. Quoting Williams v. Bass, 63 F.3d 483, 485 (6th Cir. 1995), the court noted that Vickers must show that he has "been deprived of a protective liberty or property interest by arbitrary governmental action." Citing Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), the circuit court held that no deprivation of an inmate's

liberty interest results when he is disciplined with segregated confinement and such confinement is not an "atypical, significant deprivation" compared to the usual circumstances of prison life. We agree.

In the Sandin case Conner, a prison inmate, was sentenced to 30 days in disciplinary segregation after having been found guilty of misconduct. Conner filed a complaint against the prison officials in the federal district court, and the court granted summary judgment in favor of the officials. However, the Ninth Circuit Court of Appeals reversed the judgment, concluding that Conner had a liberty interest in remaining free from disciplinary segregation and that there was a disputed fact issue concerning whether he had received due process. The court based its conclusion on a prison regulation that instructed the committee to find guilt when a charge of misconduct was supported by substantial evidence.

The U.S. Supreme Court granted the state's petition for certiorari and reversed the court of appeals. The Court held that neither the prison regulation in question nor the Due Process Clause gave Conner a protected liberty interest that would entitle him to the procedural protections set forth in Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). 515 U.S. at 487. Also, the Court held that "Conner's discipline in segregated confinement did not present the type of

atypical, significant deprivation in which a State might conceivable create a liberty interest." Id. at 486. In short, based on the Sandin case, we conclude that Vickers was not deprived of his due process rights. Punishment in the form of 45 days disciplinary segregation was not an "atypical, significant deprivation" which created a liberty interest in Vickers' case. See also Marksberry v. Chandler, 126 S.W.3d 747 (Ky. App. 2004).

Further, we conclude that there was no error in connection with the adjustment committee ordering Vickers to pay restitution for the drug test. Prison regulations authorized such action. Also, the fact that the amount of the test was not specifically stated does not render it indefinite; rather, it was only undetermined as to the exact amount.

The order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Douglas Vickers, *Pro Se*
LaGrange, Kentucky

BRIEF FOR APPELLEES:

Emily Dennis
Justice & Public Safety
Cabinet
Frankfort, Kentucky