

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000656-MR

RICHARD GOWER

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 04-CI-00010

DALE M. WATSON, WARDEN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, KNOPF, AND TACKETT; JUDGES.

TACKETT, JUDGE: Richard Gower appeals from the dismissal by the Lyon Circuit Court of his petition for review of a prison disciplinary action. Gower, who was housed at the Marion Adjustment Center, was disciplined for failing a drug test. Gower argues that the chain of custody on his urine sample was broken, and therefore the positive result was unreliable. The Department of Corrections responds that Gower failed to exhaust

his administrative remedies, and that even if he had not, the chain of custody was not broken as Gower claimed. We affirm.

Gower tested positive for amphetamines and methamphetamines on November 26, 2003, and the result was confirmed by a second test the next day. Gower lost 60 days of good time, received 45 days in administrative segregation, and had his visitation privileges restricted for 6 months. Gower filed this action challenging the disciplinary proceeding, alleging numerous flaws in the chain of custody. The circuit court dismissed the petition for failure to exhaust his administrative remedies, and its order also states that the petition was without merit on the substantive issue of the sufficiency of the chain of custody. This appeal followed.

It appears that Gower did not sufficiently demonstrate in his petition before the circuit court that he had exhausted his administrative remedies. The applicable statute, Kentucky Revised Statute 454.415(1), requires that an inmate must exhaust his available administrative remedies before a petition in the circuit court may be filed. The Department notes that Gower did not attach a copy of his appeal to the warden to his petition, so it could not be determined whether he raised the issues argued in the petition at the institutional level. Gower also did not avail himself of the opportunity to correct those defects in his petition when the Department moved to dismiss the

petition. Therefore, it appears that Gower failed to carry the burden of demonstrating that he had exhausted his administrative remedies.

In any event, Gower's claim of a defect in the chain of custody appears to be without merit. On review of a prison disciplinary proceeding, courts are obliged to uphold a prison disciplinary body's decision if some evidence supports its conclusion. Superintendent, Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985), Smith v. O'Dea, 939 S.W.2d 353 (Ky. App. 1997). Gower claimed that the chain of custody of his urine sample was defective under Byerly v. Ashley, 825 S.W.2d 286 (Ky. App. 1991). The record demonstrates that this is not true. The Department's brief thoroughly addresses the reasons why the chain of custody was unbroken and why, therefore, the test results were reliable. We will not reproduce that detailed analysis here, but summarize it as follows.

Gower claims several specific defects with the chain of custody. He alleges that (1) his specimen was not collected at the site indicated on the Custody and Control form; (2) the handling of the double-sealed specimens from placement in a secured box at the yard office of WKCC to pick-up by the courier constituted a break in the chain of custody; (3) the lack of a courier's signature and the method of identification of the

courier constituted a break in the chain of custody; (4) the name of the laboratory employee that received his specimen is indecipherable; (5) the testing laboratory did not maintain a chain of custody on his specimen because some pages of his documentation were identical to pages in other inmates' documentation; (6) because one line on a page of his documentation contained the notation N/A instead of a signature, the chain of custody was broken. Items (2) and (3) above were admittedly not raised in his appeal to the warden, and are therefore not subject to review.

Addressing each in turn, item (1) was not sufficiently addressed at the institutional level. Gower could have requested that the person who collected the specimen be called as a witness at his hearing, but did not do so. There is no evidence in the record that supports Gower's position.

Item (4) is refuted on the face of the record. Attached to the briefs is a copy of the paperwork with the allegedly indecipherable name, and it is clear that the employee's name is Veronda Boyland Curtis. The name is stamped, and the stamp is somewhat smudged, but still readable.

Item (5) is explained by a look at the practice of the testing facility. Each individual specimen is identified by a unique number, but the specimens are placed in numbered batches for testing purposes. The chain of custody documentation for

each specimen in the batch will have matching signatures distinguished by the unique specimen number. It stands to reason that the pages of other inmates would appear substantially identical, given this practice. In any event, Gower completely failed to demonstrate how this constituted a chain of custody break.

Item (6) is also explained by the testing facility's practice. The notation N/A means nothing more than that the particular step, for which there is a space on the internal form, was not taken. There is no evidence in the record that indicates that this notation somehow demonstrates a break in the chain of custody.

For the foregoing reasons, the decision of the Lyon Circuit Court is affirmed.

ALL CONCUR.

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