

RENDERED: MAY 13, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2004-CA-000685-MR

BARBARA HURLEY, MICHAEL  
HENDERSON, AND STACY HOLT;  
MEMBERS OF THE WESTERN  
KENTUCKY CORRECTIONAL  
COMPLEX

APPELLANTS

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 03-CI-00118

VANCE GREEN

APPELLEE

OPINION AND ORDER  
DISMISSING APPEAL

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BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

SCHRODER, JUDGE: This is an appeal by the Western Kentucky Correctional Complex from an order of the Lyon Circuit Court remanding a prison disciplinary action finding that appellee tested positive for marijuana in the course of a random drug test. Because the order was not a final order pursuant to CR 54.01, it is not appealable and must be dismissed.

In the disciplinary proceeding in this case, the inmate alleged that he had not used marijuana and that the

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

positive result must have been caused by cold medicine (chlorphenaramine) he was taking around the time of the test. In his declaratory judgment action in the Lyon Circuit Court, the inmate, Vance Green, maintained that he was denied his due process rights pursuant to Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), when he was not allowed to present reliable evidence to the prison adjustment committee concerning the possibility that the cold medicine could produce a false positive test result. In its order entered on February 12, 2004, the court remanded the action to the adjustment committee for a reconsideration of Green's guilt upon submission a written question to the lab which conducted the urinalysis as to whether the ingestion of chlorphenaramine could produce a positive reading for marijuana. Western Kentucky Correctional Complex ("WKCC") now appeals, contending that Green was afforded all the due process rights to which he was entitled in the disciplinary proceeding and that WKCC should not be required to present expert medical evidence to refute Green's claim that the cold medicine produced the false positive reading.

CR 54.01 provides that "[a] final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." There was no finality language included in the court's order of February 12, 2004. And that order was

clearly interlocutory in that it did not adjudicate all the rights of Green. In remanding the action, the court left the final determination of Green's guilt to the adjustment committee. Accordingly, the order was not appealable. See Revenue Cabinet, Commonwealth of Kentucky v. Moors Resort, Inc., 662 S.W.2d 219 (Ky. 1983).

For the reasons stated above, the appeal is hereby  
DISMISSED.

ALL CONCUR.

ENTERED: May 13, 2005

/s/ Wil Schroder  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Emily Dennis  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Vance Green, pro se  
Eddyville, Kentucky