

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001093-MR

FRANKIE BRUMLEY

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 03-CI-00607

DOUGLAS FLETCHER, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Frankie Brumley appeals from an order of the Bell Circuit Court dismissing his petition for declaration of rights relating to a prison disciplinary action. We affirm.

Brumley is an inmate at the Bell County Forestry Camp in Pineville, Kentucky. On September 23, 2003, at approximately 3:30 p.m., Brumley was involved in an incident with another inmate, Rick Smith. Brumley punched Smith in the face, and Smith was taken to the Pineville Community Hospital for x-rays and treatment. The x-rays revealed that Smith had four facial fractures.

Incident reports were filed, and Brumley was charged with "physical action resulting in serious physical injury to another inmate." On September 26, 2003, Brumley appeared before an adjustment committee for a hearing by a three-member panel. The panel found him guilty of the charge, and it imposed a penalty of 180 days disciplinary segregation and forfeiture of 360 days of good time credit. He was also ordered to pay restitution to Smith for his injuries. Brumley, who claimed that he acted in self-defense when he struck Smith, appealed the adjustment committee decision to the prison warden, who concurred with the committee's findings and action.

Brumley subsequently filed a petition for declaratory judgment in the Bell Circuit Court. He claimed violation of his constitutional rights and of the Corrections Cabinet's Policies and Procedure. He also asked that the case be scheduled for a trial by jury. On May 19, 2004, the circuit court entered an order dismissing Brumley's petition. This appeal followed.¹

Brumley has raised several issues in his brief. The appellee did not file a brief, although through counsel he filed a notice that he would rely on the arguments made in his response to Brumley's petition for declaration of rights that was filed in the circuit court.

¹ Brumley has completed his disciplinary segregation time, so he is only seeking restoration of the 360 days of good time credit.

In support of his argument that his constitutional rights were violated and that the prison authorities failed to follow their own policies and procedures, Brumley first states that the disciplinary report form that was initially filed failed to state whether he waived 24-hour notice of the committee hearing and whether he pled guilty or not guilty. While Brumley is correct in stating that the initial report failed to contain information regarding either matter, a second report was prepared and given to him after the first report had been sent back to the officer by the supervisor for the inclusion of additional information. The second report stated that Brumley waived 24-hour notice and that he was not pleading guilty. In short, the second form contained the relevant information that the first form did not contain, and we fail to see how Brumley could have been prejudiced by the deficiencies in the first report.

Second, Brumley states that pictures of the injured inmate and hospital reports were not attached to the incident report or otherwise provided to him prior to the committee hearing. We conclude that there was no doubt that Smith suffered facial fractures, and Brumley admitted that he punched Smith and caused the injuries. Because any pictures of Smith and hospital reports as to his injuries were not necessary to substantiate the charge against Brumley, the failure to provide

those items to him was not prejudicial and did not violate his rights.

Third, Brumley states that he was not given a copy of a Miranda warning card. He does not deny that he was advised of his Miranda rights, and he does not claim that Miranda warnings are necessary in prison disciplinary actions. On the other hand, the incident report indicates that the officer who prepared it advised Brumley of his Miranda rights. We conclude that the omission of a Miranda warning card from the report does not violate any of Brumley's rights.

Brumley states that there was confusion surrounding the date and time of the incident. It is true that the two disciplinary reports filed by the officer incorrectly stated the date of the incident as being September 24, 2003, rather than September 23, 2003. He argues that on September 24, 2003, he had already been placed in disciplinary segregation and could not have possibly committed the offense on that date. While that is true, Brumley admitted that he punched Smith. In short, Brumley's rights were not violated due to the technical error in the reports.

Brumley next contends that the circuit court failed to make specific findings of fact when it issued its order and that

such failure violates CR² 57. While it is true that the circuit court did not specifically address the facts in the case, we see nothing in CR 57 that requires such findings. Further, although Brumley states that he made a written request for the court to make findings of fact and conclusions of law, we fail to see where he did so in the record. Also, CR 52.04 required Brumley to bring such failure to the attention of the trial court. At any rate, the court was not making factual determinations when it ruled on Brumley's petition; rather, it was reviewing factual determinations and conclusions which had already been made. In short, there was no error in this regard.

Brumley next argues that the court did not honor his request for a trial by jury. Because he was not entitled to a jury trial in this case, his argument is without merit.

Brumley also argues that the prison authorities failed to provide him with a certified resident legal aide to assist him in defending the disciplinary action. He alleges that the legal aide appointed to assist him had not been trained and certified. The appellee does not deny that the legal aide had not been certified, but the appellee argues that the policies and procedures specifically state that there may be circumstances where a qualified inmate legal aide may not be available at the institution. The appellee also states that

² Kentucky Rules of Civil Procedure.

Brumley has not alleged "that he has been denied access to the courts and does not identify any deficiency in the assistance provided by the legal aide assigned to help him prepare for his adjustment hearing that prejudiced his claim." We agree with the appellee that Brumley has not demonstrated how the failure to have a certified legal aide to assist him prejudiced him in any manner or violated any constitutional right.

Finally, Brumley argues that one of the three members of the adjustment committee should not have been allowed to participate in the hearing and decision because the committee member had taken photographs of the injured inmate after the incident. Having reviewed the policies and procedures, we find no requirement of disqualification under these circumstances. Thus, the argument is without merit.

The order of the Bell Circuit Court is affirmed.

BARBER, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

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