

RENDERED: AUGUST 12, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001428-MR

GEORGE ROBERT CLINE

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 04-CI-00176

LARRY CHANDLER, WARDEN;
BILL SEARCY, ADJUSTMENT CHAIRMAN;
CATHY BUCK, CORRECTIONAL OFFICER;
AND LOUISE KUEHN, CLASSIFICATION
TREATMENT OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER AND JOHNSON, JUDGES; MILLER, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, George Robert Cline (Cline), appeals,
Pro Se, from the order of the Oldham Circuit Court denying his

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Petition for Declaration of Rights, and a requested evidentiary hearing. We affirm the trial court's ruling.

Cline is an inmate at the Kentucky State Reformatory. On November 19, 2003, Cline was ordered to produce a urine sample as part of the institution's random drug testing policy. The record contains the names of the institutional officers who conducted the collection and packaging of the sample. Cline contends that the sample was put in "temporary storage" prior to receipt by the courier, and that the record failed to show chain of custody for the sample prior to its collection by the courier. The sample was received by the testing laboratory on November 25, 2003. Cline claims that there was no showing as to where or by whom the sample was held for the period from November 16th through November 25th.

The sample tested positive for cannabinoids on November 3rd. On December 15th, a Disciplinary Report was issued charging Cline with a Category IV, Item 2 offense, "Unauthorized use of drugs or intoxicants." Cline was penalized with forty-five days of disciplinary segregation, and the loss of sixty days good time credit. Cline appealed the penalty to the warden, and the warden affirmed the ruling. Cline then filed a Declaration of Rights with the Oldham Circuit Court. The circuit court denied the petition.

Cline contends that there was no appropriate chain of custody records kept on the sample. He challenges the validity of the results based on this ground. The trial court found that the chain of custody for the sample was complete and in compliance with applicable law as defined in Byerly v. Ashley, 825 S.W.2d 286 (Ky.App. 1992).

After collection by the officers named in the Custody and Control form accompanying the sample, the sample was placed in a secured storage unit in accordance with prison policy. The Custody and Control form contained the signatures of the employees collecting the sample, as well as Cline's signature. The sample was sealed at that point to protect its integrity.

With regard to the handling of the sample after it left the correctional institution, Cline complains that the chain of custody was not maintained. As the sample is sealed when the courier picks it up from the institution, the courier cannot sign the custody sheet. The record does show receipt and delivery of the sealed sample by the courier. The laboratory receiving the sample provided signatures for the individuals testing and storing the sample. The laboratory report shows that the sample was intact and sealed when received. Cline contends that the laboratory signatures do not establish a chain of custody because they may be illegible. The record shows that the report was properly signed, and that a name stamp identified

the person as receiving the evidence. Cline complains that the particular laboratory testing the sample was not identified. The record shows that the testing laboratory was properly identified. It also reveals that laboratory results exists identifying two labs testing the sample. One lab actually tested the sample, and the other laboratory verified results. That laboratory did not physically test the sample, so no chain of custody signatures were required for that lab.

Cline asserts that the chain of custody was broken when a second test of the sample was required, and the report does not identify the individual who required the re-test. The record shows, however, signatures for persons actually performing the test and the reason that a second test was necessary. The report shows that there was an instrument error requiring a second test. An individual has signed the report as the certifying scientist.

Cline argues that the disciplinary report issued did not contain an accurate report of the incident as the report did not contain a chain of custody showing that the integrity of the sample was maintained. He argues that the Committee's ruling should have been reversed. As the record contains a complete chain of custody form, this claim of error does not constitute grounds for reversal of the trial court's decision. Cline also contends that the Warden was in error in denying his appeal of

the disciplinary ruling. Where "some" evidence supports the decision of a prison disciplinary body, that ruling may not be disturbed on appeal. Smith v. O'Dea, 939 S.W.3d 353 (Ky.App., 1997). No reversible error is shown in the trial court's ruling.

Cline complains that the Adjustment Committee's ruling was in error when it imposed an undetermined sum as "restitution" in this matter. Cline contends that no restitution can be required in absence of a court order. The Adjustment Committee ruled that Cline was liable for the costs of testing the sample, but did not provide any evidence of such costs. The Appellees assert that the law does not require a court order prior to requiring restitution from an inmate. In Campbell v. Miller, 787 F.2d 217 (7th Cir. 1986), the court found that requiring court approval for disciplinary committee requirements for restitution would "impair the efficacy of prison disciplinary measures. . . ." Id., at 224-225. The Appellees argue that court interference with imposition of penalties by a prison is to be discouraged. This Court has held that a prison has wide discretion in disciplinary matters. Gilhaus v. Wilson, 734 S.W.2d 808, 810 (Ky.App. 1987). Cline has failed to show grounds for reversal in the imposition of testing costs by the Adjustment Committee.

Cline claims reversible error in the trial court's denial of his request for an evidentiary hearing. Where, as here, the record contains evidence sufficient to permit review of the issues raised, no evidentiary hearing is required. Sanders v. Commonwealth, 89 S.W.3d 380, 385 (Ky. 2002). No reversible error is shown in the trial court's denial of the request for evidentiary hearing. The trial court's ruling is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

George Robert Cline, Pro Se
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BRIEF FOR APPELLEE:

Rebecca Baylous
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