

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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001628-MR

LARRY W. GRIFFIN

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
CIVIL ACTION NO. 04-CI-00169

LARRY CHANDLER

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: HENRY, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: Inmate Larry Griffin appeals from the circuit court's order dismissing his declaratory judgment action, which alleged that his state and federal constitutional rights were violated during prison disciplinary proceedings. Because our review of the record supports the conclusion that Griffin's rights were not violated, we affirm the dismissal order.

I. BACKGROUND/PROCEDURAL HISTORY.

Griffin was cited for physical action resulting in the serious injury of another inmate, a Category VII, Item 2, violation of Corrections Policy and Procedure (CPP) 15.2.¹ Griffin seriously injured inmate Shane Ragland by striking him in the head at least three times with a ten-pound weight plate on June 1, 2003. This attack was the climax of an argument between the two, which started over whose turn it was to use a piece of weightlifting equipment. After Ragland was found injured in the weight pavilion, he received first aid at the prison. He was later transported by stretcher to Baptist Hospital Northeast and then by stat flight to University Hospital in Louisville. His head wound was closed with surgical staples. The disciplinary report was based on the accounts of inmate witnesses Ragland, James Bunch, Steve Halsey, and Roger Whitaker; but it did not identify exactly what each of these witnesses said about the incident.

Griffin received a copy of the disciplinary report on June 10, 2003. He pleaded not guilty. He did not waive the

¹ See CPP 15.2(VI)(C). This offense also encompasses physical action resulting in the death of another inmate. It is characterized as a "Major Violation." See CPP 15.6(IV). "Physical Action" is defined in relevant part as "any act of fighting, hitting, kicking, shoving, pushing, biting, using force or other similar types of physical contact" CPP 15.2(IV). "Serious Injury" is defined as "an injury requiring more than basic first aid." *Id.* All cited provisions from CPP are those versions which were in effect on June 1, 2003, and may have subsequently been amended.

twenty-four hour notice requirement or his right to appear at the hearing. A legal aide was assigned to him. He requested the following witnesses: Ragland, Bunch, Halsey, Whitaker, and Recreation Director Karen Heath. A disciplinary hearing was conducted on June 18, 2003, by Adjustment Officer Lt. Phillip Kute. Griffin was found guilty of the institutional offense of physical action resulting in the serious injury of another inmate.² However, this decision was overturned by the Warden on appeal because Griffin was not allowed to question any of the witnesses that he had identified. A rehearing was ordered to give Griffin this opportunity.

Griffin's rehearing was conducted by Adjustment Officer Lt. Larry Voirol. It began on August 6, 2003, but was continued until August 13, 2003, because medical evidence to support the element of serious injury had not been provided to Griffin earlier. This evidence included an incident report prepared on June 1, 2003, by V. Prather, the nurse who treated Ragland immediately after he was found injured in the weight pavilion. Also included were some photographs taken by Lt. Prestigiacomo on June 2, 2003, of Ragland's head wound after it was stapled. On August 9, 2003, Griffin also first received

² Griffin was assigned to disciplinary segregation for 180 days and had to forfeit two years of non-restorable good time. He was also ordered to pay restitution in the amount of 50 percent of the expenses for Ragland's medical treatment once that amount was determined.

notice that information from confidential informants would be considered by the adjustment officer. He received a memorandum from Lt. Voirol stating as follows: "Confidential information has been provided by Internal Affairs to the hearing [o]fficer indicating that Larry Griffin was the inmate involved in the physical attack on inmate Shane Ragland. . . . More than two (2) but less than five (5) inmates identify Griffin as the one who hit Ragland with the 10# weight."

When the rehearing resumed on August 13, 2003, Griffin called inmates Ragland, Bunch, Halsey, and Whitaker as witnesses but waived the right to call Heath. The adjustment officer made the following findings of fact:

Prior to hearing[,] Larry Griffin . . . was reminded of his Miranda rights that were read to him earlier and indicated that he understood those rights and chose not to make any statement during the hearing. Griffin was reminded that failure to make a statement during the adjustment hearing could be used against him and Griffin chose not to answer questions. Hearing Officer did provide notice by cover letter of confidential information that had been provided that identified Griffin as the inmate that did hit inmate Shane Ragland with a 10 pound weight in the weight shed. Griffin claimed not to have been given 24 hour notice to hearing held today but this hearing was just continued. Hearing Officer finds that Larry Griffin did cause serious injury to inmate Shane Ragland, [Category] VII[,] Item 2, based on confidential information provided to the Hearing Officer that identifies Larry Griffin as the inmate that did hit Shane

Ragland 3 times in the head with a ten pound weight after having an [argument] over who was going to use the squat weights. Confidential information was deemed reliable due to the fact more [than] two but less than five inmate[s] [described] incidents leading up to and including Griffin hitting Ragland with the weight and information taken from each when interviewed [separately] describes the incident in the same manner. Ragland described his injury as being [enclosed] with staples rather than stitches [which] matches picture provided by Lt. Prestigiacomo. Griffins [sic] refusal to make any statement during the [investigation] and hearing was considered when making the [decision]. . . .

Griffin was found guilty of physical action resulting in the serious injury of another inmate. His penalty was 180 days of disciplinary segregation, forfeiture of 2 years of non-restorable good time,³ and restitution for 50 percent of Ragland's medical bills upon receipt of them. Griffin again appealed to the Warden; but, this time, the Warden affirmed the adjustment officer's decision.

Griffin then filed a petition for declaration of rights, seeking expungement of his disciplinary record, restoration of his good time credits, and restoration of the money he has paid in restitution. The circuit court granted the Appellees' motion to dismiss. This appeal followed. Griffin has asserted that the disciplinary proceeding violated his due

³ The amount of good time to be forfeited was also described elsewhere in the disciplinary report form as "720 days."

process and equal protection rights as guaranteed by the United States Constitution and Sections 2, 10, 11, 13, and 59 of the Kentucky Constitution.

II. ANALYSIS.

Before addressing the merits of his appeal, we must address a procedural error. Griffin's notice of appeal named "Larry Chandler ET,AL" [sic] as the only appellee, both in the body and the caption. But the captions of Griffin's brief and reply brief list Lts. Larry Voirol, Carol Thaman, Phillip Kute, and Gary Prestigiacomo as appellees, in addition to Warden Larry Chandler. The notice of appeal does not comply with Kentucky Rules of Civil Procedure (CR) 73.03(1), which mandates that "[t]he notice of appeal shall specify by name all appellants and all appellees ('et al.' and 'etc.' are not proper designation of parties) and shall identify the judgment, order or part thereof appealed from." Because Griffin is a pro se appellant and because none of the appellees have raised this issue, we have reviewed the merits of his appeal despite this procedural error.⁴

Griffin has asserted that the disciplinary proceeding violated his due process and equal protection rights as guaranteed by the Fourteenth Amendment of the United States

⁴ See Beecham v. Commonwealth, 657 S.W.2d 234, 236 (Ky. 1983) (stating that "[p]ro se pleadings are not required to meet the standard of those applied to legal counsel").

Constitution and also violated Sections 2, 10, 11, 13, and 59 of the Kentucky Constitution. But we need not address the alleged violations of the Equal Protection Clause or the Kentucky Constitution in depth for the reasons stated below.

The simple goal of the Equal Protection Clause is to "keep[] governmental decisionmakers from treating differently persons who are in all relevant respects alike."⁵ But Griffin has not even alleged that he was treated differently from others, the essence of an equal protection claim. So the circuit court properly dismissed Griffin's claims alleging an equal protection claim.

Griffin has also alleged violations of Sections 2, 10, 11, 13, and 59 of the Kentucky Constitution. Section 10 protects persons from unreasonable search and seizure. No search or seizure occurred in the instant case. Section 11 addresses the rights available to an accused in a criminal prosecution. Prison disciplinary proceedings are civil administrative proceedings, and they are not part of a criminal prosecution.⁶ Section 13 protects against double jeopardy and the taking of property without just compensation. Double

⁵ Nordlinger v. Hahn, 505 U.S. 1, 10 (1992).

⁶ Wolff v. McDonnell, 418 U.S. 539, 556 (1974); Stanford v. Parker, 949 S.W.2d 616, 617 (Ky.App. 1996).

jeopardy does not apply to civil administrative proceedings.⁷ And Griffin has not alleged that any property was taken by the government. Section 59 concerns limitations on the power of the legislature to pass local or special legislation. Clearly, this has nothing to do with Griffin's disciplinary proceedings. Therefore, Griffin's allegations that Sections 10, 13, and 59 of the Kentucky Constitution were violated are without merit.

Section 2 of the Kentucky Constitution forbids absolute and arbitrary power and has been construed as guaranteeing both due process⁸ and equal protection.⁹ But, for the reasons noted above, Griffin has not stated a viable equal protection claim under either the state or federal constitution. Griffin has asserted a violation of his federal due process rights. However, the guarantee against arbitrary state action in Section 2 of the Kentucky Constitution is satisfied with respect to judicial review of fact-finding by a prison disciplinary committee by the same quantum of evidence as the Due Process Clause because the same standard of review applies.¹⁰

⁷ Fankhauser v. Cobb, 163 S.W.3d 389, 398 (Ky. 2005).

⁸ Smith v. O'Dea, 939 S.W.2d 353, 357 (Ky.App. 1997); Pritchett v. Marshall, 375 S.W.2d 253, 258 (Ky. 1964).

⁹ Pritchett, 375 S.W.2d at 258.

¹⁰ O'Dea, 939 S.W.2d at 358.

Therefore, we do not need to perform two separate due process analyses.

A. Due Process Rights in Prison Disciplinary Hearing.

The full range of rights to which a defendant is entitled in a criminal prosecution does not apply to prison disciplinary proceedings.¹¹ But when an inmate faces the possible deprivation of a liberty interest (i.e., good-time leave)¹² or property interest (i.e., restitution), he is entitled to at least minimal due process protection. Due process requires that the inmate receive written notice of the claimed violation no less than 24 hours before the hearing “in order to inform him of the charges and to enable him to marshal the facts and prepare a defense.”¹³ The inmate is also entitled to “a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken.”¹⁴ This written statement serves both to “protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding” and to ensure that prison

¹¹ Wolff, 418 U.S. at 556.

¹² *Id.*, 418 U.S. at 557-558.

¹³ *Id.*, 418 U.S. at 564.

¹⁴ *Id.*, 418 U.S. at 563.

administrators will act fairly because they will be subjected to possible scrutiny.¹⁵

B. Standard of Review.

In Smith v. O'Dea, we adopted the so-called "some evidence" standard for prison disciplinary decisions¹⁶ as set forth in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill:¹⁷

We hold that the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced. . . ."

Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of the witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.¹⁸

C. Issues Preserved and Raised on Appeal.

Griffin's pro se brief is rather disjointed, and he attempts to raise many issues for the first time on appeal. We will not address the claims which were not raised before or

¹⁵ *Id.*, 418 U.S. at 565.

¹⁶ 939 S.W.2d at 358.

¹⁷ 472 U.S. 445 (1985).

¹⁸ *Id.*, 472 U.S. at 455-456 (citations omitted).

decided by the circuit court.¹⁹ This leaves five general issues to be addressed—five ways in which Griffin believes his due process rights were violated; although, sometimes he has given alternative reasons for why he believes a certain type of error occurred. Griffin's claims are as follows: (1) he was not provided adequate notice of the charges against him at least twenty-four hours prior to his disciplinary hearing; (2) he was not provided adequate notice of the confidential informants' evidence to be used against him at least twenty-four hours before his disciplinary hearing; (3) the adjustment officer's written findings of fact were inadequate; (4) the adjustment officer was biased; and (5) the circuit court erred by adopting the recommendations of the Appellees' attorney without making an independent consideration of the record.

1. Failure to Receive Timely and Adequate Notice of Charges.

Griffin asserts that his due process rights and CPP 15.6(VI)(C)(4)(b)(3)(c)²⁰ were violated because he was not

¹⁹ See Regional Jail Authority v. Tackett, 770 S.W.2d 225, 228 (Ky. 1989) (stating that "[t]he Court of Appeals is without authority to review issues not raised in or decided by the trial court").

²⁰ CPP 15.6(VI)(C)(4)(b)(3)(c) sets forth the following procedures for the prison:

Provide the inmate with a copy of all documents to be used by the Adjustment Committee or Adjustment Officer unless the disclosure of those documents constitutes a threat to the safety and security of an inmate, the public, or the institution. Documents include reports, photographs, tests, tape

provided adequate notice of the charges against him at least twenty-four hours prior to his hearing. Specifically, he complains that he was not provided the summary of the confidential informants' statements or the medical evidence concerning the severity of Ragland's injuries at least twenty-four hours before his original hearing on June 18, 2003, or before his rehearing on August 6, 2003. Any deficiency in notice concerning his June 18, 2003, hearing which might have occurred was rendered moot when the Warden ordered a rehearing.²¹ As for not receiving this information before his August 6, 2003, rehearing, this is not the relevant date because the rehearing was continued for a week, in part, because Griffin had not

recordings or other written materials to be used as evidence.

- (1) Excluding those documents prohibited from disclosure as noted above, documents not provided the inmate immediately following the completion of the investigation shall be provided not less than twenty-four (24) hours prior to the hearing.
- (2) If the documents are not provided, a summary of the information contained in the documents shall be provided. The summary may be included in and consist of the Disciplinary Report which shall be noted on Part I of the Disciplinary Report.

²¹ We do not express an opinion concerning whether the statements made by the confidential informants identifying Griffin as the person who attacked Ragland even existed as of the date of Griffin's initial disciplinary hearing on June 18, 2003. The Appellees have asserted that this evidence was uncovered in the continuing investigation after Griffin's initial disciplinary hearing.

received the medical evidence. Griffin does not dispute that he received this evidence on August 9, 2003, more than twenty-four hours before the rehearing resumed on August 13, 2003. Therefore, he had sufficient notice of the evidence and time to prepare his defense accordingly.²² Griffin has not shown how he was prejudiced by the fact that he received this notice during a continuance rather than before the rehearing. No violation of due process or the CPP occurred.

Griffin also asserts that he was confused by the fact that two disciplinary report forms were prepared for the same incident. The first report was prepared on June 9, 2003, by Lt. Gary Prestigiacomo. Griffin received notice of it on June 10, 2003. A second disciplinary report was prepared on July 17, 2003, by Lt. Phillip Kute. Griffin received notice of it on July 29, 2003. The second disciplinary report form indicates that "[t]his report is being prepared as the result of a rehearing ordered by Warden Larry Chandler." Like the first report, it describes the events from Griffin and Ragland getting into an argument through Griffin hitting Ragland in the head at least three times with a ten-pound weight plate. But the second report is more specific in attributing statements to particular witnesses. The investigative portion of this disciplinary report also differs from the original in that it has specific

²² See Wolff, 418 U.S. at 564.

statements by inmates Bunch, Halsey, and Whitaker concerning what they did or did not see. Bunch stated that he never saw Griffin and Ragland touch each other but that he witnessed them arguing. Halsey said all he saw was a group of people gathered around. Whitaker saw pushing and shoving between Ragland and an African-American inmate, but he could not positively identify that inmate as Griffin.²³

Griffin asserts that the first disciplinary report was dismissed on or about July 16, 2003, by Lt. Kute, who later ordered a reinvestigation. He reasons that the first disciplinary report could no longer provide him with notice of any charges pending against him after it was dismissed. Griffin further asserts that Lt. Voirol improperly dismissed the second disciplinary report form at the rehearing and, instead, relied on the first disciplinary report form despite the fact that it had already been dismissed.

There is no evidence in the record before this Court that the first disciplinary report was dismissed or that a reinvestigation was ordered. A second disciplinary report form was prepared, but we cannot say why. Moreover, even if the first disciplinary report had been dismissed before the rehearing, as Griffin asserts, he still received adequate notice. The "essential information" that an inmate ordinarily

²³ Griffin is African-American.

needs to prepare a defense for a disciplinary hearing is the knowledge of the time, place, and persons involved in each alleged violation.²⁴ The factual allegations concerning the time, place, and persons involved and the nature of the incident are substantially the same in both disciplinary reports. Due process in a prison disciplinary setting requires that the inmate receive sufficient notice of the charges against him in order to apprise of these charges and give him sufficient time to muster the facts and prepare a defense.²⁵ Regardless of which report Griffin relied on, he had adequate notice to satisfy this requirement.

2. Failure to Receive Timely and Adequate Summary of Confidential Information.

Griffin asserts that he was not provided an adequate summary of the confidential information to be used against him at least twenty-four hours before his rehearing. As this Court recognized in Gilhaus v. Wilson, the use of confidential informants in prison disciplinary proceedings is not inconsistent with due process where there is concern about retaliation.²⁶ In fact, CPP 9.18 sets forth the procedures

²⁴ Gilhaus v. Wilson, 734 S.W.2d 808, 809 (Ky.App. 1987).

²⁵ Wolff, 418 U.S. at 564, 94 S.Ct. at 2979.

²⁶ *Id.* at 810 (noting that “[r]evealing the names of informants could lead to the death or serious injury of some or all of them and in the long run would dry up the supply of informants, allowing [disciplinary violations] to persist unchecked”).

concerning the use of inmate informants, including confidential informants. While the institution can withhold information that would identify the informants, due process requires at a minimum that it provide the essential information the inmate needs to prepare his defense, such as the time, place, and persons involved in each alleged violation.²⁷ CPP 9.18(VI)(A)(2) dictates the following procedure for the use of confidential information: "The accused inmate shall be given written notice of the general nature of the confidential information, omitting those details that may tend to identify the inmate who gave the confidential information, 24 hours in advance of the Adjustment or Classification Committee hearing."

The summary Griffin was given on August 9, 2003, gave an adequate description of the general allegations made against him by the confidential informants—that they identified him as the person who struck Ragland in the head with the ten-pound weight plate—while omitting details that might tend to identify the informants, such as their names and the exact number of informants. And, despite the objections noted earlier by Griffin, he got this summary at least twenty-four hours before the hearing. So due process and CPP 9.18(IV)(A)(2) were both satisfied.

²⁷ *Id.*

Nevertheless, Griffin argues that he did not receive adequate notice of the confidential informants' evidence because it was deliberately withheld by the Appellees. He asserts that the Appellees had this information before his hearing and rehearing but refused to disclose it to him in a timely fashion. This is pure speculation unsupported by any evidence and cannot serve as the basis for overturning the circuit court's dismissal of Griffin's claims. The Appellees assert that this information was discovered in the course of its continuing investigation into the incident after the Warden ordered a rehearing. Even if the institution did have the information earlier and refused to reveal it, Griffin has not shown how this prejudiced him or violated the minimal requirements of due process.

In the alternative, Griffin seems to argue that the summary of the confidential information provided to him cannot be adequate because it is based on a fraud. He maintains that there are no confidential informants. He asserts that the Appellees fabricated this evidence by recasting the inmate witnesses who had already been identified by name in the initial disciplinary report as "confidential informants." Because Griffin offers no evidence to support this implausible theory, he offers no legal basis for overturning the circuit court's decision.

3. Failure to Make Adequate Findings of Fact Supported By Some Reliable Evidence.

Griffin asserts that the adjustment officer's decision is not supported by some reliable evidence that he failed to make adequate findings of fact. First, he asserts the adjustment officer impermissibly relied upon the confidential informants' evidence without making an independent determination that the informants were reliable. In Gilhaus, this Court noted that no particular formula is required by the factfinder in making the determination that the confidential informants are trustworthy.²⁸ "The verification procedure need not be comprehensive[;] the committee need only some reference to verification."²⁹ In this instance, the adjustment officer noted that the information was deemed reliable because of the fact that more than two and less than five informants identified Griffin as the person who struck Ragland with the ten-pound weight plate when interviewed separately. This is sufficient to verify the reliability of the confidential informants' statements.

Griffin also maintains that there was no competent evidence in the record to show that Ragland was seriously injured, which is an element of the offense. "Serious Injury"

²⁸ 734 S.W.2d at 810.

²⁹ *Id.* (holding that the adjustment committee sufficiently verified the confidential informants' credibility by noting that the informant or informants passed polygraph examinations).

is defined by CPP 15.2(IV) as “an injury requiring more than basic first aid.” The adjustment officer found that Ragland received surgical staples to close his head wound. He based this on Ragland’s testimony and the photographs taken by Lt. Prestigiacomo of Ragland’s head wound after it was stapled. Surgical staples are more than basic first aid. Griffin asserts that Ragland was not competent to testify about the surgical staples because he is not a doctor. But he does not need to be an expert witness to testify as to whether a medical procedure was performed upon him. His testimony and Lt. Prestigiacomo’s photographs are more than the “some evidence” needed to establish that Ragland received a serious injury.

Griffin claims that the adjustment officer did not provide a written statement as to the evidence relied on and the reasons for the disciplinary decision as required by the factfinder in Wolff v. McDonnell.³⁰ He asserts that as in King v. Wells,³¹ the adjustment officer merely incorporated the reporting officer’s account.³² However, the instant case is clearly distinguishable from King. In King, the hearing officer based the decision on the staff investigator’s report without explaining in any detail what aspect of the report was relied

³⁰ 418 U.S. at 564.

³¹ 760 F.2d 89 (6th Cir. 1985).

³² *Id.* at 93-94.

upon.³³ The fact that the staff investigator's report was a compilation of the statements of ten different witnesses, all of whom may not have agreed, made it impossible to understand the basis of the hearing officer's decision, which eliminated the possibility of any meaningful review.³⁴ That is not the case here. The adjustment officer made detailed findings of fact and, specifically, pointed out that he was basing his decision on the following: Griffin's failure to testify during the investigation and hearing; the statements by three or four confidential informants, each of whom separately identified Griffin as the person who struck Ragland; Ragland's testimony about receiving surgical staples; and Lt. Prestigiacomo's photographs of Ragland's head wound after it was closed with surgical staples.

Even if no one specifically identified Griffin as the person who hit Ragland, there would still be some evidence to support the adjustment officer's finding based on the circumstantial evidence contained in the disciplinary report. The report states that immediately before Ragland was struck with a weight plate while in the weight pavilion, they had argued over the use of weightlifting equipment. In Superintendent, Massachusetts Correctional Institution,

³³ *Id.*

³⁴ *Id.*

Walpole v. Hill,³⁵ the United States Supreme Court held that similar circumstantial evidence was enough to uphold a disciplinary decision finding an inmate guilty of beating another inmate.³⁶ In that instance, the only evidence was the inmate who was the subject of the disciplinary hearing was one of three inmates who had been seen running away from an enclosed area where a commotion had been heard and which was deserted, except for the inmate who had been beaten.³⁷

4. Failure to Receive an Impartial Adjudicator.

Griffin asserts that his due process rights were violated because he did not receive an impartial administrative adjudicator. He asserts that Lt. Voirol, the Adjustment Officer presiding over the rehearing, was biased and should have disqualified himself under CPP 15.6(VI)(A)(4)(a), which states as follows: "A committee member, Adjustment Officer[,] or Unit Hearing Officer shall be disqualified in every case in which he has: 1) filed the complaint or witnessed the incident; 2) participated as an investigating officer; 3) been assigned the subsequent review of the decision." Griffin asserts that Lt. Voirol participated as an investigating officer by continuing the hearing from August 6, 2003, until August 13,

³⁵ 472 U.S. 445 (1985).

³⁶ *Id.*, 472 U.S. at 456-457.

³⁷ *Id.*

2003, in order to allow investigators time to gather medical evidence about the extent of Ragland's injuries.

An allegation of bias on the part of a factfinder must be supported by documentation and evidence.³⁸ Here, the record does not support that anything improper occurred. On Part II of the disciplinary report form, the adjustment officer gave the following reason for the one-week continuance: "Medical information to support charge of serious injury to another inmate not provided to Griffin prior to hearing." By granting a continuance because Griffin had not received the medical evidence before the commencement of the hearing on August 6, 2003, the adjustment officer did not act as investigator. Nor does the decision to grant such a continuance demonstrate any animus or bias on the part of the adjustment officer toward Griffin. Indeed, denying a continuance under those circumstances might have violated Griffin's due process rights. We are unconvinced that Griffin was denied an impartial adjustment officer.

5. Circuit Court's Failure to Make an Independent Determination from the Record.

Griffin also asserts that the circuit court violated his due process rights by not making an independent determination from the record but instead adopting the

³⁸ Foster v. Commonwealth, 348 S.W.2d 759, 760 (Ky. 1961).

recommendations of the respondent's attorney. He asserts that if the circuit court had reviewed the record, it would have ruled in Griffin's favor on his declaration. Therefore, since the circuit court did not rule in his favor, it must not have reviewed the record. The fault in this circular reasoning is obvious. Moreover, Griffin's argument is based on a misunderstanding of the standard of judicial review for a disciplinary proceeding. As noted above, the reviewing court's role is to determine whether there was some evidence to support the administrative tribunal's decision.³⁹ Making this determination "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence."⁴⁰ Not only was it proper for the circuit court to rely on the administrative record in rendering its decision, it was also necessary.⁴¹

III. CONCLUSION.

The administrative record reveals that Griffin was afforded all the due process protections to which he was entitled in a prison disciplinary action. Finding that no violations of his state or federal constitutional rights

³⁹ Hill, 472 U.S. at 455-456.

⁴⁰ *Id.*, 472 U.S. at 455 (emphasis added).

⁴¹ O'Dea, 939 S.W.2d at 356.

occurred, we affirm the Oldham Circuit Court's order dismissing his declaratory judgment action.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Larry Wayne Griffin, Pro se
Central City, Kentucky

BRIEF FOR APPELLEE:

Rebecca Baylous
Frankfort, Kentucky