

RENDERED: May 27, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001646-MR

DAVID TAYLOR

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT  
HONORABLE SAMUEL C. LONG, JUDGE  
ACTION NO. 01-CI-00169

JOHN MOTLEY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>  
BARBER, JUDGE: Appellant, David Taylor (Taylor), appeals pro se  
from an order of the Morgan Circuit Court denying his motion for  
relief pursuant to RCr 11.42. Taylor further alleges that the  
circuit court wrongfully denied him a hearing on his motion and  
denied his constitutional rights. We affirm the trial court's  
ruling.

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting a Special Judge by assignment of the Chief Justice pursuant to Section 100(5)(b) of the Kentucky Constitution and KRS 21.580.

Taylor and another inmate were involved in a homosexual act. Taylor claimed that the act was consensual, but the mother of the other inmate contacted the institution asserting that her son had been raped. It was alleged that the other inmate claimed that Taylor had choked him and forced him into sexual contact. The victim gave a statement so indicating at the time. The Kentucky State Police investigated the allegations. Taylor was charged with sexual assault on July 12, 2001. A disciplinary hearing was held in the matter and Taylor was found guilty. As a penalty Taylor lost 1,080 days good time setting his release date back approximately three years. Taylor appealed the finding to the Warden, who affirmed the finding and penalty.

In 2002 the other inmate submitted affidavits stating that Taylor did not rape him. Those affidavits were made part of the record. Despite Taylor's request that the other inmate testify at the disciplinary hearing, the victim did not appear as a witness. For that reason, no evidence was offered tending to show that the act was consensual. In his motion for reconsideration of the warden's ruling on his appeal Taylor presented the affidavit. Taylor contends that the affidavit was new evidence as support for reconsideration of the adverse ruling. Warden Motley denied the reconsideration stating that Taylor had presented no new information which would alter the

earlier determination. Taylor appealed the warden's ruling to the circuit court pursuant to CR 60.02. The court denied the motion finding that the evidence submitted was not "newly discovered" as required by the civil rules. Taylor did not appeal the circuit court ruling.

Taylor filed a declaratory judgment action in the Morgan Circuit Court claiming that the Warden and Corrections personnel had violated applicable policies and procedures. The action was dismissed by the trial court. Taylor appealed the denial of the declaratory judgment action to this Court which affirmed the dismissal by the Morgan Circuit Court.

Taylor then filed the underlying RCr 11.42 motion, claiming that the taking of his good time was a criminal action and that he was entitled to relief on those grounds. There is no evidence in the record showing that the denial of good time credit was a criminal act. The grant or denial of good time credit is an administrative determination. Good time credit is not a right, but rather a conditional gratuity. Fowler v. Black, 364 S.W.2d 163, 164 (Ky. 1963).

Taylor asserts that the action taking his good time away was in violation of KRS 197.045, which provides for a grant of "good time credit" to prisoners who show good behavior. Good time credit is not guaranteed to any prisoner. Commonwealth v. Higgs, 59 S.W.3d 886, 893 (Ky. 2001). The denial of good time

credit is not a criminal act. The trial court was not in error in finding no criminal action on the part of the adjustment committee or the warden. On review of the determinations by an adjustment committee and prison warden this court does not make a de novo determination of guilt or innocence. The court just reviews the record to see whether "some evidence" supports the decision made. Yates v. Fletcher, 120 S.W.3d 728, 730 (Ky.App. 2003). The trial court's ruling is affirmed.

Taylor contends that Department of Corrections personnel denied him exculpatory documents relevant to the charges against him. Taylor contends that investigatory documents showed a pattern by the victim of offering sexual favors in exchange for excusing debts, and then claiming that he had been assaulted by the individuals accepting such sexual favors. This argument was before the trial court and the appellate court previously. The law holds that the Department of Corrections may promulgate policies and procedures under the authority granted to it by KRS 196.030, 197.020 and Section 254 of the Kentucky Constitution. Creation of policies and procedures imposes on the Department of Corrections the duty to ensure that the rights ensured by the policies and procedures comply with procedural due process requirements. See: Wolff v. McDonnell, 418 U.S. 539, 556-557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). As the Commonwealth argues, administrative violations

require a civil remedy and are not criminal charges against the institution. In its earlier rulings the court made a determination regarding Taylor's civil claims. That ruling is final and binding.

Taylor further asserts that the trial court improperly filed the RCr 11.42 motion part of the earlier declaratory judgment action rather than making it a separate criminal action. The motion made related to the earlier action and was integrally involved therewith. No separate criminal claims are supported by the record. The documents show on their face a relation to the earlier proceeding. For this reason, we find no error in the court's assignment of the case. The issues raised in Taylor's most recent motion are those which have been raised and ruled upon in earlier proceedings. For this reason, Taylor's claims are barred by the doctrine of res judicata. Napier v. Jones by and through Reynolds, 925 S.W.2d 193, 195 (Ky.App. 1996).

The Order of the Morgan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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