

RENDERED: July 15, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001918-MR

JAMES ROCKY WRIGHT

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 04-CI-00227

JOHN DAMRON, GENERAL COUNSEL,  
KENTUCKY DEPARTMENT OF CORRECTIONS;  
PAT TURPIN, DEPUTY WARDEN,  
BLACKBURN CORRECTIONAL COMPLEX;  
JAMES L. MORGAN, WARDEN, NORTHPOINT  
TRAINING CENTER; LT. ALBERT MCQUERY,  
NORTHPOINT TRAINING CENTER

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; AND MILLER, SENIOR  
JUDGE.<sup>1</sup>

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

McANULTY, JUDGE: James Rocky Wright appeals the order of the Boyle Circuit Court which denied his motion for declaratory judgment challenging the constitutionality of KRS 197.045(5) and alleging that disciplinary proceedings conducted pursuant to that statute were lacking in due process. KRS 197.045(5) provides:

(a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.

The court below found that an institutional charge and penalty for filing an action considered "frivolous and for the purposes of harassment" did not impede Wright's First Amendment right of access to the courts, because inmates do not have a constitutionally protected right to file frivolous or harassing causes of action. The court further found no basis for Wright's equal protection and due process claims. We affirm.

This case originated after Wright filed a declaratory judgment action in the Lee Circuit Court in September 2002. The Lee Circuit Court found that the action was frivolous and was filed for the purpose of harassment.<sup>2</sup> Wright was transferred to Northpoint Training Center. Wright was issued a disciplinary

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<sup>2</sup> The case was affirmed by this Court on February 4, 2005 (2003-CA-001156-MR & 2003-CA-001873-MR). Discretionary review by the Kentucky Supreme Court was denied May 11, 2005.

report on the charge of filing a claim which was dismissed as frivolous and harassing. Following a hearing, he was penalized by forfeiture of 180 days good time credits, non-restorable. Following the warden's review on appeal, a rehearing was ordered. After a second hearing, the same decision was obtained and the same penalty assessed.

In his declaratory judgment action, Wright made a number of allegations against the constitutionality and validity of KRS 197.045 and the disciplinary proceedings which were conducted. His attacks on the statute may be condensed as follows: inmates' right of access to the courts may not be denied or obstructed; the statute is "retaliatory in nature" against inmates who assert their rights in the courts; the statute imposes a "criminal penalty"; any penalty for filing a frivolous suit should be assessed by the courts and not the correctional system; and the statute violates equal protection rights. He further argued he was not afforded due process during his disciplinary proceedings. We find no merit in any of these claims.

First, we agree with the court below that Wright has not shown that his access to the courts was impeded by this statute. Inmates have a constitutional right to adequate, effective and meaningful access to the courts. Bounds v. Smith, 430 U.S. 817, 97 S. Ct. 1491, 1495, 52 L. Ed. 2d 72 (1977).

Under the legislation at issue, prisoners may still file the actions they require to appropriately challenge their incarceration or conditions of incarceration. A prisoner only meets the consequences of KRS 197.045(5) when the court has determined after review that the action was not brought for a valid purpose, but for one of the improper purposes listed. Since Wright received actual review of his action by the Lee Circuit Court, he was provided with "meaningful access to the courts." Childs v. Pellegrin, 822 F.2d 1382, 1384 (6th Cir. 1987).

We also believe that Wright has not shown the statute has only a "retaliatory purpose." An inmate claiming retaliation for the exercise of First Amendment rights must show: (1) that he or she engaged in protected conduct; (2) that an adverse action was taken that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) that there is a causal connection -- that is, that the adverse action was motivated, at least in part, by the inmate's protected conduct. Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999). An inmate's undisputed First Amendment right to file grievances against prison officials on his own behalf is protected conduct, however, only if the grievances are not frivolous. Herron v. Harrison, 203 F.3d 410, 415 (6th Cir. 2000), citing Lewis v. Casey, 518 U.S. 343, 353, 116 S. Ct.

2174, 135 L. Ed. 2d 606 (1996). Thus, an inmate cannot show retaliation for protected conduct if the action brought in the courts was not protected.

We observe, moreover, that the statute itself provides that the *court*, rather than prison officials, must make the finding that the action was improper, resulting in forfeiture. The courts are charged with making such a determination when an inmate's action was manifestly "malicious, harassing, or factually frivolous," not merely lacking in merit. Thus, it is clear that the objective of the legislation is not to retaliate, but to deter frivolous, malicious and harassing litigation.

A prisoner has no right to file such suits. The inmate's interest in constitutional protections must be balanced against the legitimate "needs and exigencies of the institutional environment" including that of providing discipline to prisoners. Wolff v. McDonnell, 418 U.S. 539, 555, 94 S. Ct. 2963, 2974, 41 L. Ed. 2d 935 (1974); see also Smith v. O'Dea, 939 S.W.2d 353, 357 (Ky.App. 1997). The state has a legitimate purpose in trying to reduce the number of frivolous claims by inmates in its courts, and to avoid the use of the court system for malicious or harassing suits.

Corrections is correct in asserting that the penalty assessed by the statute is not criminal in nature. Prison disciplinary proceedings are not part of a criminal prosecution.

Wolff, 418 U.S. at 556, 94 S. Ct. at 2975; Stanford v. Parker, 949 S.W.2d 616, 617 (Ky.App. 1996). Thus, we agree that the penalty of loss of good time is not, as Wright alleges, a criminal penalty for a civil action. We also agree with Corrections that there is no legal requirement that inmates must be provided with an opportunity to restore forfeited good time credit. Furthermore, although Wright argued that the warden should have suspended his penalty, KRS 197.045(5)(b) states that penalties set by regulation under KRS 197.045 "shall be as uniform as practicable throughout all institutions."

The fact that there is another statute, KRS 454.405, by which the court may assess monetary penalties for actions which are dismissed as malicious, harassing or factually frivolous does not preclude a separate statute permitting the Department of Corrections to assess a penalty for the same reason. Wright's argument, therefore, that the question of sanctions for frivolous or harassing suits should only be dealt with by the courts is misguided.

Additionally, we agree with the court below that Wright has not presented any valid equal protection argument. Neither prisoners nor indigents are a protected class. Hampton v. Hobbs, 106 F.3d 1281, 1286 (6th Cir. 1997). KRS 197.045(5) makes no distinction between any groups of inmates.

Wright's remaining arguments pertain to his due process rights in the institutional proceedings. Wright's additional arguments that the procedures of KRS 454.054 were not followed are baseless since that was not the statute under which Wright was penalized.

According to the Supreme Court in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S. Ct. 2963, 2979-80, 41 L. Ed. 2d at 956-57, due process requires the government to give the inmate an opportunity for a hearing before revoking good-time credit as a punishment for violating prison rules. If a prison disciplinary hearing may result in the loss of good time credits, the inmate is entitled to receive advance written notice of the claimed violation; an opportunity to call witnesses and to present documentary evidence at a hearing--when permitting this will not be unduly hazardous to institutional safety or correctional goals; and a written statement by the fact-finder as to the evidence relied on and the reasons for the disciplinary action. Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Additionally, although a prison inmate facing administrative disciplinary proceedings does not have the same procedural safeguards as does a person facing criminal prosecution, fundamental fairness dictates that the evidence relied upon to punish him be reliable. Byerly v. Ashley, 825 S.W.2d 286 (Ky.App. 1991).

Wright was afforded a hearing in this case at which he was able to present evidence. He received notice and a written report as to the violation as well as review on appeal. Furthermore, although he argues about the manner in which evidence was presented at his hearing, he does not attempt to argue that the report used to find him guilty was not accurate or reliable. Therefore, we find no violation. In addition, Wright argues that it was premature and inappropriate for him to receive the penalty from Corrections before his case, which was found to be frivolous, was finalized on appeal. Now that his case has been affirmed on appeal, Wright cannot demonstrate any harm.

For the foregoing reasons, we affirm the Boyle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Rocky Wright  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Rebecca Baylous  
Frankfort, Kentucky