

RENDERED: MARCH 31, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000276-MR

DOMINICO BURDELL

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
CIVIL ACTION NO. 04-CI-00473

JAMES L. MORGAN
AND ROGER SOWDERS

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

MINTON, JUDGE: Inmate Dominico Burdell appeals *pro se* from the Boyle Circuit Court's denial of his declaratory judgment action challenging a prison disciplinary proceeding that resulted in loss of good-time credit. Based on our review of the record, we find that some evidence exists to support the circuit court's conclusion. Thus, we affirm.

In May 2004, a cell phone was found in a pickup truck used by a road crew of prisoners from the Blackburn Correctional facility. A tracing of the recent telephone calls made from that phone revealed that Burdell made some of the calls. As a result, Burdell was charged with possession of dangerous contraband. A hearing was held, after which an adjustment officer found Burdell guilty of the charged offense and imposed his punishment at loss of ninety days of good-time credit. The warden upheld the adjustment officer's decision, after which Burdell filed a declaratory judgment action in the Boyle Circuit Court. That court denied Burdell's request for relief, after which Burdell filed this appeal.

As we construe his *pro se* brief, Burdell raises two main arguments. First, he contends that the circuit court misinterpreted the evidence. Second, he contends that a cell phone cannot properly be classified as dangerous contraband.

In Smith v. O'Dea,¹ we adopted the so-called "some evidence" standard for review of prison disciplinary decisions as set out by the United States Supreme Court in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill.² The Court stated:

¹ 939 S.W.2d 353 (Ky.App. 1997).

² 472 U.S. 445 (1985).

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 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. We decline to adopt a more stringent evidentiary standard as a constitutional requirement. Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances. The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context.³

Upon that standard, Burdell's appeal must fail.

We agree with Burdell that the circuit court erred by finding that the corrections officer involved voluntarily submitted to a polygraph test. The record clearly reflects that Burdell, not the officer, submitted to the polygraph. But the trial court's error does not alter the ultimate outcome of this

³ *Id.* at 455-456. (Internal citations and quotation marks omitted).

case because Burdell admits to using the cell phone; although, he maintains that he had permission from the road crew personnel to do so. So there is some evidence in the record to support the decision to impose discipline upon Burdell for possessing the cell phone.

Furthermore, we reject Burdell's argument that a cell phone cannot be properly classified as dangerous contraband. Under Corrections Policy and Procedure 9.6, which is incorporated by reference at 501 Kentucky Administrative Regulations (KAR) 6:020, dangerous contraband includes any object that may be used to facilitate escape. Clearly, a cell phone could be used to facilitate an escape. The fact that Burdell did not use the cell phone to aid an escape attempt does not mean that a cell phone could not be used for that purpose.

That a cell phone does not fit within the definition of dangerous contraband found at Kentucky Revised Statute (KRS) 520.010(3), as Burdell argues, is irrelevant. That statute defines dangerous contraband for purposes of a criminal charge of promoting contraband. Burdell was not charged with that crime; and, in addition, "[r]evocation of good time credits is not comparable to a criminal conviction[.]"⁴ In short, we find that the Department of Corrections acted within its discretion when it defined dangerous contraband to include any

⁴ *Id.* at 456.

item which could facilitate an escape, a definition which clearly encompasses cell phones.

For the foregoing reasons, the decision of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dominico Burdell, *Pro se*
Burgin, Kentucky

BRIEF FOR APPELLEES:

No brief for Appellees