

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000304-MR

JAMES R. WOLFE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA R. ISAAC, JUDGE  
ACTION NO. 04-CI-03857

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, James R. Wolfe (Wolfe), appeals, pro se, the Fayette Circuit Court's ruling on a Petition for Declaration of Rights and Motion for Injunctive Relief. The lower court ruling is affirmed.

The Department of Corrections failed to file any brief in this case and failed to notify this Court of any reason for such failure. CR 76.12(4)(d) outlines the requirements for an Appellee's brief, requiring the party to show this Court where in the record relevant facts supporting its position may be

found. This Court decries the refusal of a party to comply with its duties on appeal. Failure to file a brief can result in this Court's accepting the facts and issues detailed by the appellant as correct. Blades v. Commonwealth, 957 S.W.2d 246, 249 (Ky. 1997). As the record in this case, as provided in attachments to the Appellant's brief, contains facts supporting the underlying determination by the Department of Corrections, we affirm the lower court's ruling.

Wolfe is incarcerated at the Blackburn Correctional Complex. He was given a disciplinary report while he was an inmate. The report charged him with possession of a quantity of marijuana capsules with intent to distribute. The contraband was found on April 17, 2004, after the women's restroom was searched. A woman visiting Wolfe was the last visitor to the restroom that day. Eighty-eight other visitors had used the restroom on the same date. The restroom was not searched until after each visit. On April 27, 2004 Wolfe was charged with the disciplinary offense.

Wolfe was found guilty of the offense and was given 45 days disciplinary segregation, and required to forfeit 180 days of good time credit. Wolfe appealed the conviction to the warden. The warden affirmed the Adjustment Committee's findings. Wolfe then filed a Petition for Declaration of Rights

and Motion for Injunctive Relief in circuit court. The circuit court dismissed the motion.

The disciplinary report shows that the female visitor caught Wolfe's attention after leaving the restroom. She held up four fingers, then a closed fist, then four fingers again. It was postulated that this was a signal to call her at 4:40. The visitor was photographed making those signals. Wolfe denies that the hand movements were a signal to call her at 4:40, and asserts that his visitor wanted him to call her at 4:00. Wolfe contends that he was found guilty at the adjustment hearing because he did not call his visitor that day at 4:00. This assertion is unsupported by the evidence. Wolfe testified that he did not call the visitor at 4:00 because the institute was counting inmates at that time, so he was not free to use the phone until 4:40. He argues that the timing of the telephone call was coincidence and not evidence of the Department of Corrections' position.

Wolfe argues that any one of the 88 visitors who used the restroom on that day could have planted the contraband. He asserts that there is no evidence linking the contraband to him. He contends that the ruling should be set aside due to insufficient evidence against him. The record shows that his visitor was the last person to use the restroom that day, at the end of the visitation period. The record also shows that after

leaving the restroom, his visitor was photographed catching his attention and making specific signals to him.

Wolfe contends that the disciplinary write up was wrongfully delayed for ten days, and should be found improper for that reason. Although the Corrections Cabinet failed to file a brief supporting its position before this Court, a search of the record before the trial court shows that at the hearing, the Corrections Cabinet claimed that the delay in making the charges was due to the ongoing investigation. We find no reversible error in the delay.

The circuit court held that Wolfe had failed to show any substantive due process violation or equal protection violation. Wolfe was given a written notice of the charges against him, given an opportunity to make a defense to the charges, and was provided a written statement by the fact-finder showing why he was found guilty and detailing the punishment imposed. Such proceedings satisfy the due process requirements found in the law. Wolfe v. McDonnell, 418 U.S. 539, 563-567, 94 S.Ct. 2963, 49 L.Ed.2d 934 (1994). Where, as here, some evidence supports the finding of guilt, the finding may be affirmed on appeal. Smith v. O'Dea, 939 S.W.2d 353, 358 (Ky.App. 1997).

Wolfe argues that the warden failed to make specific findings when affirming the Adjustment Committee's ruling. He

claims that this conduct violates Corrections Policy and Procedure 15.6. The cited Corrections Policy and Procedure sections apply only to the Adjustment Committee, and not to the warden. The law provides that written findings by the Adjustment Committee and affirmed by the warden comply with constitutional requirements. Yates v. Fletcher, 120 S.W.3d 728, 731 (Ky.App. 2003). For this reason, Wolfe's argument must fail.

For the foregoing reasons, we find no reversible error in the Fayette Circuit Court ruling, and that ruling is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

No brief for appellee.

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