

RENDERED: FEBRUARY 10, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001322-MR

CRAIG MILLINER

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 05-CI-00006

PATTI WEBB, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

GUIDUGLI, JUDGE: Craig Milliner appeals from an order of the Muhlenberg Circuit Court dismissing his petition for a declaration of rights. Milliner, an inmate at that Green River Correctional Complex, claimed that GRCC employees incorrectly determined that a urinalysis showed a false positive for marijuana use. The circuit court found no basis for concluding that the positive test result was in error or that Milliner had

¹ Senior Judge Joseph R. Huddleston, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

been improperly punished for the offense. For the reasons stated below, we affirm the order on appeal.

On September 1, 2004, GRCC corrections officer Donnie Terry directed inmate Milliner to produce a urine sample for toxicological screening. The collection was witnessed by corrections officer Jeffery Hope. The specimen tested positive for carboxy-THC, indicating that Milliner had consumed marijuana in violation of GRCC policy.

Sgt. Frederick Basham prepared a write-up and investigation report of the incident. After notice to Milliner, a hearing on the offense was conducted. Milliner was found guilty and received 45 days disciplinary segregation, 60 days good time loss, and was ordered to pay restitution for the cost of the screening. Milliner prosecuted an institutional appeal, after which Warden Patti Webb sustained the conviction and discipline.

Pursuant to KRS 418.040, Milliner, through counsel, appealed the Warden's decision to the Muhlenberg Circuit Court. Milliner claimed that the failure of a courier to sign the chain of custody form at the time the urine sample was transported to the laboratory broke the chain of custody and made the sample unreliable. He also argued that the initial misspelling of his name on the chain of custody sheet violated his procedural due process rights, and he maintained that he did not receive equal

protection because GRCC failed to investigate whether cold medicine he ingested could produce a false positive result.

After hearing the proof, the circuit court entered an order of dismissal, which forms the basis for the instant appeal. The circuit court rejected each of Milliner's arguments as unsupported by the record or the law, or otherwise being specious, and it granted Webb's motion to dismiss the action. This appeal followed.

Milliner now argues that the circuit court erred in dismissing his petition for a declaration of rights. In a rambling pro se brief, Milliner argues in very broad terms that GRCC employees at all points in the process conspired to deny him the due process rights to which he is entitled, and that they did so for the purpose of insuring an adverse outcome. He appears to center his argument on the assertion that the GRCC hearing officials improperly failed to call witnesses who could have testified that the alleged positive urinalysis resulted from taking cold medicine. Characterizing himself as "the target" and the GRCC corrections officers as "the hunters", he seeks a reversal of the order on appeal with remand for the purpose of allowing additional witnesses to testify. In the alternative, he seeks an order directing GRCC to expunge all records related to the proceeding, along with an order for the restitution of his good time credit and legal costs.

We have closely examined Milliner's written argument,² the record and the law, and find no basis for reversing the order on appeal. The corpus of Milliner's claim of error is that the circuit court improperly failed to conclude that GRCC should have investigated his assertion that the cold medicine he allegedly consumed before entering GRCC produced a false positive toxicology result. That is to say, it appears that Milliner is arguing that he failed to receive the procedural due process to which he was entitled.

An inmate involved in a prison disciplinary proceeding is not entitled to the full panoply of due process rights to which a criminal defendant is entitled.³ Loss of "good time" credit, however, is the deprivation of a liberty interest entitling the inmate to at least minimal due process protection.⁴ Such due process requires that the inmate receive written notice at least 24 hours prior to the hearing, and a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken.⁵

On appeal from a prison disciplinary proceeding, the standard of review is whether there exists "some evidence" in

² Webb, et al., did not file a responsive brief.

³ Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

⁴ Id. at 557.

⁵ Id.

support of the disciplinary outcome.⁶ The outcome will be sustained if the evidence is merely sufficient such that it "could support" the decision of the disciplinary board.⁷

In the matter at bar, there is no question but that "some evidence" exists which "could support" the disciplinary action imposed on Milliner. This evidence consists of the positive urinalysis screening, the write-up and investigation reports, the statements and observations of the corrections officers, and the record as a whole that was before the disciplinary panel. Milliner's assertion that he was entitled to additional investigation of the cold medication claim is not supported by the case law. Milliner was entitled to minimal due process, and nothing in the record or Milliner's written argument supports the assertion that the degree of due process he received failed to meet this standard. As such, we find no basis for reversing the order on appeal.

For the foregoing reasons, we affirm the order of dismissal of the Muhlenberg Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT: No brief filed for appellee.

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⁶ Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

⁷ Id.