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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-001359-MR

RODNEY GRIMES

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 05-CI-00075

GLEN HAEBERLIN

APPELLEE

OPINION
AFFIRMING IN PART AND REVERSING IN PART

** ** * * *

BEFORE: KNOPF AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

KNOPF, JUDGE: Rodney Grimes, an inmate at the Kentucky State Penitentiary at Eddyville, brought this action under KRS 418.080 alleging that Glen Haeberlin, Warden of the Eddyville prison, and John Rees, the Commissioner of Corrections,² are violating

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.

² Grimes's notice of appeal names Warden Haeberlin but not Commissioner Rees. Only Warden Haeberlin, therefore, is a party

his rights under the Eighth and Fourteenth Amendments to the Constitution of the United States by holding him in disciplinary segregation and denying his future accumulation of statutory good time credits. By order entered June 22, 2005, the Lyon Circuit Court dismissed the petition for failure to state a claim and found it frivolous for the purposes of KRS 454.405. Although the trial court did not adequately invoke KRS 454.405, we affirm its order dismissing Grimes's petition.

It appears that in the year immediately preceding the filing of his petition Grimes was involved in no fewer than twenty-one disciplinary proceedings. He was charged with violations ranging from abusive language to injuring another inmate. In each instance, apparently, Grimes was accorded a hearing before the prison's adjustment committee, the committee found him guilty of the infraction, and the warden upheld the committee's determination. As a result Grimes has earned a lengthy period of confinement in the prison's disciplinary segregation unit and has been docked so much statutory good time that the penalties have exceeded the good time he has accrued and so have been assessed against his future good-time adjustments.

before this Court. CR 73.03; Schultz v. Chaddwell, 548 S.W.2d 181 (Ky.App. 1977).

In his *pro se* complaint Grimes does not challenge the correctness of any particular adjustment committee ruling, but argues that all of his penalties should be deemed invalid because all were imposed in violation of the federal Due Process Clause. This is so, he claims, because in each case the officer over-seeing the investigation approved the investigator's report before Grimes had had a chance to speak with the investigator and because in each case Grimes, who is African-American, was tried by an all-white adjustment committee, a fact, Grimes insists, indicating that the defendants have pursued a policy of excluding African Americans from that committee. Grimes also maintains that under KRS 197.045 he cannot lose good time before he earns it, so that the purported assessments against his future earnings should be deemed void. And finally, Grimes contends that the conditions of his confinement in the segregation unit are so substandard as to constitute cruel and unusual punishment in violation of the Eighth Amendment.

We review *de novo* dismissals under CR 12.02 for failure to state a claim, accepting as true the plaintiff's factual allegations and drawing all reasonable inferences in the plaintiff's favor.³ Dismissal of Grimes's petition was proper only if "it appears the pleading party could not prove any set

³ Gall v. Scroggy, 725 S.W.2d 867 (Ky.App. 1987).

of facts in support of his claim that would entitle him to relief."⁴

With respect to Grimes's due-process claims, even if we assume that his interest in statutory good time is significant enough and his expectation of receiving it firm enough to warrant due-process protection,⁵ it is clear that Grimes received all the process that was due. As he himself notes, in Wolff v. McDonnell,⁶ the Supreme Court of the United States summarized the due-process rights of inmates facing prison disciplinary proceedings in which a liberty interest is at stake and held that before the disciplinary committee could revoke good-time credits it must provide (1) at least twenty-four hours' written notice of the charges, (2) an opportunity to present a defense to an impartial decision-maker, and (3) a written explanation of the fact-finder's decision. Due process also requires that the findings of the prison disciplinary committee be supported by "some evidence in the record."⁷ The Supreme Court did not say that the inmate has a right to be

⁴ Wood v. Wyeth-Ayerst Laboratories, 82 S.W.3d 849, 851 (Ky. 2002) (citing Pari-Mutual Clerks' Union v. Kentucky Jockey Club, 551 S.W.2d 801, 803 (Ky. 1977)).

⁵ Goben v. Parker, 88 S.W.3d 432 (Ky.App. 2002).

⁶ 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

⁷ Superintendent, Massachusetts Correctional Institution, Walpole, v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985).

interviewed by the investigator. The investigator is only concerned with determining whether the charges are serious enough and well enough substantiated to bring them before the adjustment committee. That determination may, but need not, involve interviewing the accused inmate. Grimes's right was to present his side of the story to the adjustment committee, and that right was honored. There was no due process violation.

Nor do Grimes's allegations concerning the racial composition of the adjustment committee state a claim under either the Due Process or the Equal Protection Clauses of the federal constitution. Yes, Grimes was entitled to an unbiased decision maker,⁸ and yes, the Equal Protection Clause outlaws racial discrimination in the administration of prisons.⁹ The mere fact that all the members of Grimes's adjustment committee were white, however, does not support an inference either that the committee was biased against Grimes or that the appellee has invidiously excluded African-Americans from the committee. To succeed on such a claim, Grimes is obliged to allege with particularity facts indicating an intent to discriminate. Conclusory allegations are not enough.¹⁰

⁸ Wolff v. McDonnell, *supra*.

⁹ Lee v. Washington, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968); Propst v. Leapley, 886 F.2d 1068 (8th Cir. 1989).

¹⁰ Giles v. Henry, 841 F.Supp. 270 (S.D.Iowa 1993).

Grimes's claim that his good time credits may not be revoked prospectively is refuted by the statute upon which he relies. KRS 197.045 provides in pertinent part that

[t]he department may forfeit any good time previously earned by the prisoner or *deny the prisoner the right to earn good time in any amount* if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.¹¹

The prospective revocation of Grimes's good time is simply the denial of his right to earn it and is thus authorized under the statute.

Finally, Grimes contends that the conditions of his cell, particularly the facts that it is poorly ventilated and that its sink is rusted and is not supplied with hot water, constitute cruel and unusual punishment in violation of the federal Eighth Amendment.¹² To succeed on an Eighth-Amendment claim, Grimes must demonstrate that with deliberate indifference to Grimes's welfare, the appellee has deprived him of the "minimal civilized measure of life's necessities,"¹³ such as

¹¹ Emphasis added.

¹² In his brief to this Court Grimes has changed horses and asserted not a constitutional violation but a violation of KRS 211.920 - 211.945, the Confinement Facilities Health Act. Because he did not present the statutory claim to the trial court, however, it is not subject to this Court's review.

¹³ Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). See generally, William H. Danne, Jr., "Prison Conditions as Amounting to Cruel and Unusual Punishment," 51 ALR3d 111 (1973).

adequate food, clothing, shelter, sanitation, or medical care. Grimes has not alleged that he is being exposed to dangerous extremes of temperature or that he is being denied adequate opportunities to bathe. To satisfy the Constitution, cells need not be comfortable, they need only be reasonably safe and minimally decent.¹⁴ There is no constitutional requirement that they be supplied with modern sinks or hot water.¹⁵ Because Grimes has failed to allege that he is being deprived of a necessity under current standards of minimal civilized existence, his Eighth-Amendment claim was properly dismissed.

KRS 454.405 authorizes the trial court to dismiss an inmate's action if at any time the court is satisfied that the action "is malicious or harassing or . . . legally without merit or factually frivolous." Such a dismissal exposes the inmate to monetary penalties¹⁶ and, according to Grimes, is used by the prison as the basis for revoking additional good time. Given these consequences, KRS 454.405(3) requires that an order invoking this rule include "specific findings as to the reasons for the dismissal." Here, neither the trial court's conclusory assertion that "[t]here is no basis for Petitioner's present

¹⁴ *Id.*

¹⁵ Gill v. Hoadley, 261 F.Supp.2d 113 (N.D.N.Y. 2003); Daigre v. Maggio, 719 F.2d 1310 (5th Cir. 1983).

¹⁶ KRS 454.405(4).

claim," nor its summary dismissal of Grimes's statutory and Eighth Amendment claims because "Petitioner has further failed to demonstrate the impairment of any judicially recognized right," satisfied this specific-findings requirement.

Accordingly, Grimes was not properly exposed to KRS 454.405 sanctions. Otherwise, for the reasons discussed above we affirm the June 22, 2005, order of the Lyon Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Rodney Grimes, *pro se*
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