

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001826-MR

GERALD HART

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 05-CI-00289

PATTI WEBB, WARDEN; AND
PAUL WALKER, ADJUSTMENT
COMMITTEE HEARING OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM,¹ DYCHE, AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Gerald Hart appeals from an order of the Muhlenberg Circuit Court dismissing his action seeking a declaration of rights arising from a prison disciplinary proceeding. Hart maintained that he was improperly subjected to disciplinary action at the Green River Correctional Complex ("GRCC") after a urinalysis revealed the presence of THC, a

¹ Judge David C. Buckingham concurred in this opinion prior to his retirement effective May 1, 2006.

component of marijuana. For the reasons stated below, we affirm the order on appeal.

The facts are not in controversy. Hart is an inmate at the GRCC. On October 27, 2004, he submitted a urine specimen for the purpose of determining if he had used controlled substances in violation of GRCC policy. The specimen was collected under the supervision of GRCC correctional officers. A laboratory test of the specimen revealed the presence of THC/marijuana, resulting in a disciplinary "write-up" and investigation.

A hearing on the matter was conducted and Hart was found guilty of unauthorized use of drugs, a Category IV Item 2 violation of Corrections Policy and Procedure 15.2. Hart was assessed a penalty of 45 days in segregation, forfeiture of 60 days of good time, and required to pay restitution for the cost of the drug test.

Hart appealed to GRCC Warden and appellee herein, Patti Webb. On January 20, 2005, Webb denied the appeal, and thereafter Hart filed an action in Muhlenberg Circuit Court seeking declaratory and injunctive relief.² The action raised due process and chain of custody arguments. Webb then filed a motion to dismiss Hart's action. On July 20, 2005, the motion to dismiss was granted. As a basis for the order, the circuit

² The action was filed against GRCC Warden Patti Webb and GRCC Adjustment Committee Chairman Paul Walker.

court found in relevant part that the testing procedure was established to be reliable and supported GRCC's finding of unauthorized drug use. This appeal followed.

Hart now argues pro se that the circuit court erred in dismissing his action. Hart argues that there were irregularities in the testing procedure and inadequate controls on the sample's chain of custody, which resulted in an arbitrary and unsupported finding of drug use. He maintains that the "policy of using common custody and control forms and/or procedural negligence rendered his chain of custody DEFECTIVE and the test results unreliable." He takes issue with the way in which the laboratory technicians' signatures were placed on testing forms, and concludes that "there is no way that Appellee's [sic] can say with reasonable certainty that Appellant (Hart) correct [sic], unadulterated sample was accurately or, in this case, tested at all" In sum, Hart argues that procedural irregularities and improper chain of custody controls resulted in a violation of his due process rights.³

We find no error in the circuit court's order granting Webb and Walker's motion to dismiss the action. Due process in the context of prison disciplinary proceedings requires advance written notice of the charges, an opportunity to refute the

³ The appellees did not file a responsive brief.

charges and present a defense, and a written statement setting forth the evidence relied upon and the reasons for the disciplinary action.⁴ The record reveals that Hart was provided these elements of due process, and he makes no claim to the contrary. Similarly, Hart makes no allegation that GRCC employees failed to comply with the drug testing guidelines and procedures set forth in the Corrections Policy and Procedure ("CPP") manual, and our review of the record uncovers no such evidence.

The corpus of Hart's claim of error is his contention that the circuit court erred in failing to find that the chain of custody was so improperly documented or otherwise incomplete as to render the testing procedure unreliable. Again, the record refutes this claim. While we need not describe every step in the process herein, suffice it to say that GRCC has implemented procedural safeguards to ensure a complete chain of custody and that those procedures were followed in the matter at bar. The sample in question was collected under the supervision of two witnesses and was sealed in a container with a unique nine-digit number. That container was placed in another sealed container with a custody and control form. The sample was then placed in a locked storage unit until it was picked up by the courier, Airborne Express. The container was then shipped to

⁴ Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

Advanced Toxicology Network in Memphis, Tennessee, where a technician removed the custody and control form and indicated on it that the package was sealed when delivered. Additional protocols are followed at Advanced Toxicology Network to ensure proper handling.

The United States Supreme Court has ruled that only "some evidence" is required to sustain a decision of a prison disciplinary body.⁵ The chain of custody documentation and resultant positive test result, complete with the signatures of the relevant GRCC and Advanced Toxicology Network employees, is contained in the record and constitutes "some evidence" sufficient to sustain the GRCC's finding. The circuit court properly so ruled, and we find no error.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

No brief for appellees.

Gerald Hart, pro se
Sandy Hook, Kentucky

⁵ Superintendent, Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).