

RENDERED: JULY 6, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000617-MR

TIMOTHY WOODARD

APPELLANT

v. APPEAL FROM ELLIOTT CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 05-CI-00108

CAPTAIN CALLAHAN AND
GARY BECKSTROM

APPELLEES

OPINION AFFIRMING

** ** * ** * **

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

DIXON, JUDGE: Timothy Woodard, an inmate at the Kentucky State Penitentiary in Eddyville, appeals *pro se* from an order of Elliott Circuit Court dismissing his petition for a declaration of rights. Because Woodard was not deprived of any constitutional rights, we affirm the trial court's order of dismissal.

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

On September 1, 2005, while incarcerated at Little Sandy Correctional Complex, Woodard was accused of sexually assaulting a female employee of Aramark Food Service. The woman informed prison officials that Woodard approached her in a kitchen closet, made a vulgar statement about her, and touched her buttocks. Woodard received a disciplinary report charging him with sexual assault. Woodard pleaded not guilty to the charge, and a hearing was held before the prison's disciplinary adjustment committee. Woodard was assisted by an inmate legal aide at the hearing. The committee found Woodard guilty of sexual assault and assigned punishment of 180 days in disciplinary segregation and forfeiture of one year non-restorable good-time credit. The committee's decision was affirmed on appeal to the warden.

Woodard petitioned Elliott Circuit Court for a declaration of rights, seeking expungement of his disciplinary record, restoration of his good-time credit, and financial compensation for damage to his reputation and time spent in segregation. The circuit court issued an order on March 7, 2006, dismissing Woodard's petition. This appeal followed.

A prison disciplinary hearing where an inmate's good time credit is at risk must comply with procedural due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974). At a minimum, the prisoner is entitled to written notice of the charges, the opportunity to present evidence in his defense, and a report by the committee of its reasoning and conclusions. *Id.* at 564-66, 94 S. Ct at 2978-2980. The United States Supreme Court has explained:

[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. . . . 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.

Superintendent, Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356 (1985) *hereinafter MCI v. Hill*.

This Court has acknowledged *MCI v. Hill* and held “that the ‘some evidence’ standard of review provides courts with a sufficient check upon adjustment committee fact-finding.” *Smith v. O’Dea*, 939 S.W.2d 353, 358 (Ky. App. 1997).

Woodard asserts his constitutional rights were violated in three ways: 1) the committee relied on insufficient evidence; 2) he was denied witnesses at the hearing; and 3) he did not receive notice of the charges against him. Woodard presents several arguments related to these three issues for the first time on appeal. However, we will only address issues specifically raised before the trial court. *Regional Jail Authority v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989).

First, Woodard challenges the sufficiency of the evidence against him. He specifically contends the victim did not provide a credible statement of the incident and that the disciplinary report is based on hearsay. We disagree. After reviewing the record, it is apparent prison officials thoroughly investigated the incident. Despite Woodard's

argument to the contrary, there is evidence in the record supporting the adjustment committee's finding of guilt.

Woodard next contends his due process rights were violated when he was denied the right to call witnesses in his defense. However, Woodard concedes the statement of one of his witnesses, who stated he knew nothing about the incident, was read into the record at the hearing. The adjustment committee denied Woodard's request to call a corrections officer, Sergeant Williams, as a second witness, deeming the testimony unnecessary.

Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the Committee to state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases.

Wolff v. McDonnell, 418 U.S. at 566, 94 S. Ct. at 2979-2980. After reviewing the record, we find Woodard's argument unpersuasive. There is no evidence the committee abused its discretion in denying Woodard's request to call Sergeant Williams as a witness. See *Baxter v. Palmigiano*, 425 U.S. 308, 322, 96 S. Ct. 1551, 1560, 47 L. Ed. 2d 810 (1976).

Finally, Woodard alleges he did not receive proper notice of the charges against him because the disciplinary report stated the incident occurred in the dormitory, rather than the kitchen closet. After carefully reviewing the record, it appears the notation was merely a typographical error that was later corrected by prison officials.

Furthermore, the original report set forth the correct location under the heading “description of incident.” As such, we conclude Woodard received timely notice of the charges against him prior to his disciplinary hearing, as required by *Wolff, supra*.

For the reasons stated herein, the order of Elliott Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT

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