

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000625-MR

RONNIE FLEET

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 05-CI-00641

PATTI WEBB AND PAUL WALKER

APPELLEES

OPINION  
AFFIRMING

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BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Ronnie Fleet appeals from an order of the Muhlenberg Circuit Court dismissing his Petition for Declaratory Judgment. We affirm.

Fleet is an inmate at the Green River Correctional Complex. On January 28, 2005, Fleet was assigned to an inmate work crew detail at the Muhlenberg County Humane Society. That afternoon, Fleet's supervisor, Humane Society Executive Director Kim Pennington, observed that Fleet appeared to be intoxicated. Pennington drove Fleet

<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and two other inmates back to the correctional complex in her van, which was used regularly for Humane Society purposes. During the trip, Pennington became aware of a strong odor in the van, and observed Fleet defecating and then mashing the feces into the carpeting of the van. On January 31, 2005, she submitted a letter to prison officials describing the incident. As a result, Fleet was charged with creating or causing a health hazard. (He was also charged with unauthorized use of drugs or intoxicants, but that charge is not at issue here.)

On August 8, 2005, following a disciplinary hearing, Fleet was found guilty of creating or causing a health hazard. The only evidence presented to support the charge was Pennington's letter. The clothing Fleet had worn on the day of the incident had been confiscated and either laundered or destroyed. Fleet's appeal of his conviction was denied by the Warden, and he thereafter filed a Petition for Declaratory Judgment in the Muhlenberg Circuit Court. The circuit court denied the petition, and this appeal followed.

This Court has adopted the "some evidence" standard of review for prison disciplinary proceedings espoused by the United States Supreme Court in *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); *Smith v. O'Dea*, 939 S.W.2d, 353, 358 (Ky.App. 1997). In *Walpole*, the Supreme Court held that:

the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if "there was some evidence from which the conclusion of the

administrative tribunal could be deduced . . . .” 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.

*Walpole*, 472 U.S. at 455-56, 105 S.Ct. at 2774 (citations omitted.)

Fleet argues that his constitutional rights were violated because he was unable to present as evidence the clothing he was wearing when the incident in the van took place. He contends that his clothing was clean, and would therefore have served to exonerate him of the charge. Fleet’s defense was that he had stepped in dog feces which caused the odor in the van.

Under the lower evidentiary standard employed in the prison disciplinary context, Pennington's letter constituted “some evidence” to support the finding that Fleet had violated the rule against causing a health hazard. Pennington would have had little motive to lie about the incident, and there is no evidence that the removal of the clothing was intentional.

For the foregoing reasons, the order of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ronnie Fleet, *pro se*  
Green River Correctional Complex  
Central City, Kentucky

BRIEF FOR APPELLEE:

Rebecca Baylous  
Justice and Public Safety Cabinet  
Frankfort, Kentucky