

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001256-MR

CARL BROWN

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 06-CI-00042

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

LAMBERT, JUDGE: Carl Brown appeals from a denial of his Petition for Declaratory Judgment regarding a prison Adjustment Committee Hearing's finding that he had physically assaulted a prison officer. For the reasons set forth herein, we affirm.

On March 30, 2005, Brown, while housed at the Grayson County Detention Center, was involved in an incident in which he failed to show up for work, was fired, and was told to pack up his belongings. Brown reportedly became disrespectful to officers and made physical contact with at least one officer.

During an investigation of the matter, Brown admitted he had become disrespectful but denied he touched anyone. Based on the information contained in the disciplinary report, Brown was found guilty of physical action against staff and assessed a penalty of 180 days in segregation and two years forfeiture of non-restorable good time.

Brown filed a Petition with the Boyle County Circuit Court on January 24, 2005, in which he stated that he is entitled to declaratory relief because his due process rights were violated when the Department of Corrections failed to follow the provisions of Corrections Policy and Procedure 15.6 during the disciplinary process. The court issued an Order denying the Petition on the basis that Brown had not exhausted all of his available administrative remedies in accordance with KRS 454.415(1)(a).

Brown filed a Motion to Vacate and attached a copy of a Warden's Appeal to demonstrate that he had exhausted his administrative remedies. The court, however, denied the Motion and ruled that while several issues were included in his Motion, not all were included in his Appeal to the warden. The court ruled that the only issue before it was whether Brown was "entitled to a continuance of his hearing for the purpose of placing in the record a videotape of the incident at issue." The court noted that the "hearing officer made a good faith attempt to determine whether a tape existed," and it held that the evidence presented at the hearing was more than sufficient to support the findings of the hearing officer. This appeal followed.

Brown first argues that the Committee hearing was conducted in a manner that violated his due process rights, and therefore the court abused its discretion when it denied his Petition for Declaratory Judgment. We disagree.

The fact that prisoners retain rights under the Due Process Clause in no way implies that these rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed. *See U.S. Civil Service Commission v. National Ass'n of Letter Carriers*, 413 U.S. 548 (1973); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *Parker v. Levy*, 417 U.S. 733 (1974). Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings do not apply. *See Morrissey v. Brewer*, 408 U.S. 471, 488 (1972).

Furthermore, prison disciplinary proceedings require a lower evidentiary threshold to support a finding of guilty than that in a criminal prosecution.

*Superintendent, Mass. Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455

(1985). We adopt the reasoning as well as the holding of *Superintendent*, in that

[w]e hold 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. . . .

*United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 106 (1927). 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. *See United States ex rel. Tisi v. Tod*, 264 U.S. 131 (1924). We decline to adopt a more stringent evidentiary standard as a constitutional requirement. Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances.

*Superintendent*, 472 U.S. at 455.

In *Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974), the Supreme Court held that Due Process in the context of prison disciplinary proceedings, requires:

(1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in defense; and (3) a written statement by the fact finder of the evidence relied upon and the reasons for the disciplinary action.

*Superintendent*, 472 U.S. at 454 (summarizing *Wolff*). Brown received advance written notice of the disciplinary charges on June 11, 2005, at which time he requested a legal aide but requested no witnesses. Furthermore, a written statement by the fact finder was provided. Brown, however, attempts to argue that his due process rights were violated simply because a videotape was not produced of the incident. The court determined that a “good faith effort” had been made by the investigator to find the alleged tape but to no avail. Under the previously set forth standards, it is clear that this was not an abuse of discretion, and the record reflects that there was some evidence to support the Committee's finding. Therefore, we find no violation of Brown's Due Process Rights.

Accordingly, we affirm the holding of the Boyle Circuit Court.

ALL CONCUR.

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