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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001398-MR

WILTON WESTERFIELD

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID JERNIGAN, JUDGE
ACTION NO. 05-CI-00258

WARDEN PATTI WEBB AND LT. PAUL WALKER

APPELLEES

OPINION AFFIRMING

** ** * * * **

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY¹, SENIOR JUDGE
PAISLEY, SENIOR JUDGE: Wilton Westerfield appeals the trial court's dismissal of his petition for declaratory judgment. Westerfield alleges there were three errors. First, that it was error for the trial court to find that possession of the quantity of blankets constituted "some evidence" of his guilt of conspiracy to escape. Second, that it was error for the trial court to believe that the blankets were sufficient to serve as corroboration of the claims made by an anonymous letter. Finally, that his rights to due

¹ 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.

process were violated when he was found guilty based on information obtained from an anonymous source without any determination of the reliability of that informant. After a review of the record, we find no error and affirm.

Westerfield is an inmate in a state correctional institution. Prison officials received an anonymous letter informing them that Westerfield was planning an escape. A search revealed Westerfield had stored twelve blankets in his cell. Neither Westerfield nor his cellmate offered any explanation for why such a large number of blankets were present in the cell. At an adjustment hearing in March of 2005, he was found guilty of conspiring with another to escape, an obvious violation of prison policy. He was assigned to 90 days of disciplinary segregation and penalized with the loss of 180 days of good time credit. He appealed that decision to the warden who concurred with the decision of the adjustment hearing officer that there was “some evidence for a finding of guilty.” Westerfield then filed his action in the Muhlenburg Circuit Court. That court dismissed his petition ruling “some evidence supported the adjustment officer’s finding in this case.” This appeal followed.

A prison disciplinary proceeding is not a criminal prosecution. *See Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976). There is a lower standard required in such proceedings due to the inherent nature of the prison environment. *Wolff v. McDonnell*, 418 U.S.539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). There is also a lower standard of evidentiary proof required in such proceedings. The prison need not show evidence beyond a reasonable doubt but is only required to provide

some evidence of guilt. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). On appeal, we are limited to a review of the record to determine whether some evidence supports the conclusion of the disciplinary board. *Smith v. O'Dea*, 839 S.W.2d 353 (Ky.App. 1997).

Prison officials must be free to make decisions regarding what is relevant to the safety and security of those institutions, employees and inmates. *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). We will not interfere with the discretionary decisions of prison officials. *Gilhaus v. Wilson*, 734 S.W.2d 808 (Ky.App. 1987). We will not supplant the prison authority's determination of what acts may constitute a violation of prison policy nor what evidence will be used to determine if an inmate violated those policies. Although Westerfield and his cellmate had twelve blankets in the cell, neither was able to offer any reasonable explanation why such an excessive number of blankets might be needed. The hearing officer found the blankets were some evidence of an escape conspiracy. This evidence is sufficient to sustain a guilty finding.

The anonymous letter suggested that Westerfield was plotting an escape. The excessive number of blankets found in the cell were additional items of evidence that did indeed confirm the possibility that an escape was being planned. While Westerfield was unable to offer any rational explanation for having such a large quantity of blankets in his cell, the hearing officer, the warden and the trial court all believed that the blankets offered some evidence that an escape was being planned and preparations were being

made. It is not beyond belief to suspect that such a large number of blankets could be used to further an escape. That fact does indeed lend credence to the letter's claim that an escape was being planned. It was not error for the trial court to determine that the blankets corroborated the allegations contained in the letter.

Finally, Westerfield's reliance on prison policy and our prior opinions involving confidential informants in order to attempt to establish a due process violation is misplaced. He was not found guilty of conspiring with another to escape because an anonymous letter was sent to the prison authorities. He was found guilty because he had retained a dozen blankets in his cell, some of them secreted beneath a mattress, and that was some evidence of an escape plan. Failure to identify and verify the truthfulness of the anonymous informant did not constitute a due process violation.

The judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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