

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000306-MR

TRAVIS L. STONE

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 06-CI-00251

LARRY CHANDLER, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, STUMBO, AND WINE, JUDGES.

STUMBO, JUDGE: Travis L. Stone appeals from an order of the Oldham Circuit Court dismissing his petition for a declaration of rights arising from a prison adjustment committee proceeding. Stone argued that the prison proceeding deprived him of procedural and substantive due process rights, which entitled him to an order expunging the committee's findings. For the reasons stated below, we affirm the order on appeal.

Stone is an inmate at the Kentucky State Reformatory ("KSR"). On February 21, 2005, KSR nurse Jeff Efird allegedly observed Stone in the facility's nursing

care x-ray room kneeling in front of radiological technician Candice Smith. Efirid later stated that Stone had his hand on Smith's clothing near her waist, with his face "on her abdomen." Efirid reported the matter to KSR Sergeant Dale Chapman, who filed a written disciplinary report form.

Following an investigation, Stone was charged with the violation of "Inappropriate Sexual Behavior with Another Person." On April 29, 2005, a KSR adjustment committee hearing was conducted, whereupon evidence was presented and Stone was found guilty. Stone received a penalty of forfeiture of 180 days of good time credit, in addition to disciplinary segregation for 90 days.

On May 9, 2005, Stone appealed the adjustment committee's finding to KSR Warden Larry Chandler. After considering the appeal, Chandler sustained the finding and resultant forfeiture. Thereafter, Stone filed a petition for declaration of rights with the Oldham Circuit Court. In support of the petition, Stone claimed that he was denied due process due to inadequate written findings, a delayed hearing, and the denial of witnesses. He sought an order expunging the disciplinary report and restoring his lost good time.

Warden Chandler, et al., then moved to dismiss the petition, arguing that Stone failed to demonstrate a procedural or substantive due process violation arising from the prison disciplinary proceeding. After hearing proof on the matter, the circuit court rendered an order on December 15, 2006, granting the motion to dismiss and denying Stone's petition for relief. As a basis for the order, the circuit court noted the limited

range of liberty interests possessed by prison inmates, and found that Stone was provided advance notice of the charges against him, an opportunity to present a defense, and a written statement detailing the evidence relied upon and the reasons for the disciplinary action taken.

Stone now appeals from the circuit court's order granting the motion to dismiss. He argues that the circuit court erred in failing to find that the adjustment committee's action resulted in a broad deprivation of procedural due process rights, liberty interests and property interests. Specifically, Stone maintains that no credible evidence was offered at the proceeding in support of the charged offense, and that his mere knowledge of the rules does not - by itself - support a finding of guilt. Stone also contends that his refusal to verbally refute the allegation was improperly held against him, and that the circuit court improperly failed to conduct its own fact-finding review. Finally, he maintains that he was denied due process when the committee refused to allow him to call Smith as a witness. In sum, Stone argues that the committee's action was arbitrary and capricious, and that the circuit court erred in failing to so rule. He seeks an order reversing the circuit court's action and expunging the committee's findings from his prison record.

We have closely examined the written arguments and the law, and find no error in the circuit court's order dismissing Stone's petition for relief. As the parties are well aware, prisoners retain rights under the Due Process Clause of the United States Constitution, subject to restrictions imposed by the nature of their lawful imprisonment.

Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, the full panoply of rights due a defendant in a criminal prosecution is not applicable in a prison disciplinary proceeding. *Id.* The inmate's interest in the procedural protections required by due process must be balanced against the legitimate institutional needs of assuring safety and control of inmates, avoiding burdensome administrative requirements and preserving the disciplinary process as a means of rehabilitation. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); *Wolff, supra*.

In *Wolff*, the United States Supreme Court set forth the basic procedural due process requirements for a prison disciplinary hearing. First, the inmate must be provided with written notice of the charges against him at least 24 hours before the hearing. *Id.* Second, there must be a written statement by the fact-finder regarding the evidence relied upon and the reason for the disciplinary action. *Id.* Third, the inmate facing disciplinary proceedings should be allowed to call witnesses and present other evidence in his defense when allowing him to do so will not be unduly hazardous to prison safety or correctional goals. *Id.*

In the matter at bar, the record indicates that Stone was given written notice of the charges against him at least 24 hours before the hearing, and that the committee issued a written statement addressing the evidence relied upon and the reason for the disciplinary action. At issue is the probative value of the evidence presented, and whether Stone was improperly denied the opportunity to call Smith as a witness.

On the first question, i.e, whether the evidence was sufficient to support the charge, the standard of judicial review of a prison disciplinary committee's findings of fact is whether "some evidence" exists in support of the result. *Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997). The "some evidence" standard does not require that an adjustment committee's fact-finding be supported by compelling evidence; rather, it merely requires evidence that will support a reasonable inference of guilt. *Id.* at 357. Determining whether the "some evidence" standard has been satisfied does not necessitate an examination of the entire record or weighing the credibility of the evidence. *Walpole* at 455-456. The circuit court need only review the record for "some evidence" sufficient to uphold a decision of the adjustment committee. *Yates v. Fletcher*, 120 S.W.3d 728 (Ky. App. 2003).

Our review of the record reveals that "some evidence" was presented at the committee's hearing in support of the charge, and upon which the committee reasonably relied in reaching its conclusion. That evidence consisted of the testimony of KSR nurse Jeff Efird, who stated that he was present in the x-ray room at the time of the alleged offense and directly observed the conduct constituting the offense. He stated that he saw Stone kneeling in front of Smith, touching her clothing near her waist, with Stone's face pressed against Smith's abdomen. This testimony, taken alone, represents - at a minimum - at least "some evidence" in support of the committee's finding. Stated differently, the evidence sustains a "reasonable inference of guilt." *Smith, supra*. Since compelling evidence is not required to sustain the committee's finding, *Smith, supra*, Efird's

testimony taken alone was sufficient to justify the committee's disciplinary action, and the circuit court properly so found.

The next issue is whether the circuit court erred in failing to find that the committee's decision not to allow Stone to call Smith as a witness constituted a denial of Stone's due process rights. Stone does not reveal at the beginning of his written argument if this issue was raised before the circuit court nor, if so, in what manner as required by CR 76.12(4)(c)(v). "It goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court." *Skaggs v. Assad, By and Through Assad*, 712 S.W.2d 947 (Ky. 1986). *Arguendo*, even if this issue had been raised below and addressed by the circuit court (which it was not), we would not find that Stone's due process rights were violated by the committee's refusal to call Smith as a witness. The United States Supreme Court addressed this issue in *Ponte v. Real*, 471 U.S. 491, 105 S.Ct. 2192, 85 L.Ed.2d 553 (1985), in which it stated that:

We noted in *Wolff* and repeated in *Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), that ordinarily the right to present evidence is basic to a fair hearing, but the inmate's right to present witnesses is necessarily circumscribed by the penological need to provide swift discipline in individual cases. This right is additionally circumscribed by the very real dangers in prison life which may result from violence or intimidation directed at either other inmates or staff. We described the right to call witnesses as subject to the "mutual accommodation between institutional needs and objectives and the provisions of the Constitution...." *Baxter, supra*, at 321, 96 S.Ct., at 1559, citing *Wolff, supra*, 418 U.S., at 556, 94 S.Ct., at 2974.

Thus the prisoner's right to call witnesses and present evidence in disciplinary hearings could be denied if granting the request would be "unduly hazardous to institutional safety or correctional goals." *Wolff, supra*, at 566, 94 S.Ct., at 2974; *Baxter, supra*, 425 U.S., at 321, 96 S.Ct., at 1559. See also *Hughes v. Rowe*, 449 U.S. 5, 9, and n. 6, 101 S.Ct. 173, 175, and n. 6, 66 L.Ed.2d 163 (1980). As we stated in *Wolff*:

"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 [disciplinary board] to state its reasons for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases." 418 U.S., at 566, 94 S.Ct., at 2980.

See Baxter, supra, 425 U.S., at 321, 96 S.Ct., at 1559. Notwithstanding our suggestion that the board give reasons for denying an inmate's witness request, nowhere in *Wolff* or *Baxter* did we require the disciplinary board to explain why it denied the prisoner's request, nor did we require that those reasons otherwise appear in the administrative record.

Though we do not know the reason or reasons why the committee refused to allow Stone to call Smith as a witness, the committee was not required to memorialize the reasons in the administrative record. *Ponte, supra*. It is sufficient to recognize that this decision falls within the KSR's authority to maintain institutional safety and achieve correctional goals. *Baxter, supra*. Accordingly, we find no error on this issue.

Lastly, Stone contends that the committee improperly regarded his silence as an admission of guilt, or otherwise improperly used it against him in reaching its

decision. Stone does not direct us to any evidence in support of this assertion, nor to whether this issue was raised below, and it does not form a basis for altering the decision of the circuit court. *See generally, Baxter*, 96 S.Ct. 1551 at 1557-1558, which notes that while “an inmate’s silence in and of itself is insufficient to support an adverse decision by the Disciplinary Board,” the resultant implication is “a realistic reflection of the evidentiary significance of the choice to remain silent.”

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

ALL CONCUR.

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