

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2007-CA-000598-MR

PAUL PERKINS

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 06-CI-00482

JAMES MORGAN, WARDEN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Paul Perkins appeals from an order of the Boyle Circuit Court that dismissed his petition for declaration of rights involving the imposition of disciplinary penalties for the violations of physical action against an employee and tampering with physical evidence. For the reasons stated below, we affirm.

The facts are as follows. On November 15, 2005, Perkins was charged with physical action toward an employee and

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

tampering with physical evidence when he assaulted two corrections officers during a strip search at the Northpoint Training Center on November 5, 2005. The officers discovered a white substance in a ball approximately the size of a quarter, which Perkins was able to flush down a toilet located in the room the strip search was being conducted. After flushing the white substance, Perkins continued to assault the officers until he was restrained.

A hearing was conducted by an adjustment officer on November 15, 2005, and Perkins was found guilty of both violations and received 240 days segregation and a one year forfeiture of non-restorable good-time credit. These findings were upheld by James Morgan, the warden of Northpoint. Subsequent assault charges were filed against Perkins by the Boyle Commonwealth's Attorney but were later dismissed.

Perkins filed a petition for declaration of rights with the Boyle Circuit Court on October 23, 2006, alleging that he was denied his rights of due process and equal protection guaranteed by both the United States Constitution and the Kentucky Constitution. Perkins also asserts that the criminal assault charges brought by the Boyle Commonwealth's Attorney were a violation of his Fifth Amendment right against double jeopardy. The Boyle Circuit Court denied Perkins' petition by an order entered on January 11, 2007, holding that there was

sufficient evidence to support the findings that Perkins violated prison regulations. The order also found that Perkins' procedural due process rights were not violated during the prison disciplinary action. This appeal followed.

Perkins asserts that there was insufficient evidence to support a finding of guilt on the charges and that the adjustment committee failed to make adequate findings of fact, resulting in a violation of his constitutional due process rights.

In *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974), the United States Supreme Court recognized that "prison discipline proceedings are not part of the criminal prosecution, and the full panoply of rights due to a defendant in such proceedings does not apply." "Prisoners claiming a due process violation under the Fourteenth Amendment must demonstrate that they have been deprived of a protected liberty or property interest by arbitrary governmental action." *William v. Bass*, 63 F.3d 483, 485 (6<sup>th</sup> Cir. 1995). In *Wolff*, the Supreme Court has already determined that the loss of good-time credit is a protected liberty interest under the Fourteenth Amendment. 418 U.S. at 557.

The Supreme Court also held that procedural due process, in the context of prison disciplinary proceedings concerning the loss of good-time credit, requires that an inmate must receive:

(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 his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.

*Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985) (citing *Wolff*, 418 U.S. at 563-567)).

Procedural due process mandated by *Wolff* was provided to Perkins by the prison. He had advance written notice of the charges against him, an opportunity to present evidence in his defense, and was provided a written statement by the factfinder detailing the evidence relied upon and the reasons for the disciplinary actions taken.

While the Supreme Court in *Wolff* dealt with procedural requirements, in *Superintendent v. Hill*, the Court articulated the substantive quantum of evidence required to support a decision in a prison disciplinary proceeding. The Court held that a disciplinary action negatively impacting a protected liberty interest must be supported by "some evidence in the record" in order to comport with the minimum requirements of due process. *Id.* at 454.

Ascertaining whether this standard is satisfied does not require [a reviewing court's] examination of the entire record, independent assessment of the credibility of witnesses or weighing 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. *Id.* at 455-56.

Kentucky has similarly adopted a "some evidence" standard for judicial review of prison disciplinary proceedings under Section 2 of the Kentucky Constitution. *Smith v. O'Dea*, 939 S.W.2d 353, 358 (Ky. App. 1977); *Webb v. Sharp*, 223 S.W.3d 113, 117-18 (Ky. 2007).

The record shows that during a strip search conducted by correctional officers, Perkins struck one officer in the head with his fist and struck the other in the jaw. Perkins then flushed an unknown white substance down a toilet. In applying the "some evidence" standard to this case, we hold that there is more than enough evidence to support the conclusion of the adjustment officer.

Finally, Perkins argues that his Fifth Amendment right prohibiting double jeopardy was violated because he was additionally charged with third-degree criminal assault by the Boyle Commonwealth's Attorney. Perkins cites no case law or authority to support his argument that double jeopardy applies in this matter. Again, prison disciplinary hearings are not criminal proceedings. *Wolff* 418 U.S. at 556. "One of the factors of legal jeopardy is being placed on trial before a court of competent jurisdiction on an indictment or information sufficient to sustain a conviction." *Yager v. Commonwealth*, 407 S.W.2d 413, 416 (Ky. 1966) (citation omitted)). The punishment meted to Perkins was a disciplinary measure which does not

constitute legal jeopardy. It was proper for Perkins to be subjected to both administrative disciplinary proceedings and criminal prosecution. Perkins was afforded all the necessary due process rights.

The judgment of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Wesley W. Duke  
Justice & Public Safety  
Cabinet  
Office of Legal Services  
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