

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2007-CA-000849-MR

MARK JENKINS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NO. 07-CI-00047

LT. ANTOSH, CHAIRMAN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: NICKELL, THOMPSON, AND VANMETER, JUDGES.

THOMPSON, JUDGE: Mark Jenkins, an inmate at the Kentucky State Penitentiary (KSP), appeals the Lyon Circuit Court's dismissal of his declaratory judgment action in which he requested the review of his disciplinary proceeding. For the reasons set forth herein, we affirm.

On October 24, 2003, Evelyn Ritchie, a corrections officer at the Blackburn Correctional Complex (BCC), was attacked by an inmate. In two incident reports, Ritchie briefly described her attack as occurring in the early morning, after

she had descended a back stairwell, where she observed Jenkins, who was then an inmate at BCC, leaning against a wall in a crouched position.

According to her statement, Jenkins charged her, fought with her, and then forced a tan toboggan over her head. He then punched Ritchie three times in the face, grabbed her breasts, and attempted to grab her crotch. Ritchie then screamed, kicked, and struck Jenkins with her radio causing him to fall. After being struck, Jenkins fled the scene of the attack.

After Ritchie's reports were delivered to KSP, Sergeant Chad Knight began an investigation into the alleged assault. He interviewed Jenkins who denied that he had assaulted Ritchie. Knight also interviewed Lieutenant McQuinn, an internal affairs officer at BCC, who told him that Ritchie had positively identified Jenkins as her attacker and that she had been injured during the attack. At the conclusion of his investigation, Knight charged Jenkins with physical action resulting in injury of an employee and with sexual assault.

On December 10, 2003, a KSP adjustment committee held a disciplinary hearing to consider the charges against Jenkins. Following the hearing, in which Jenkins' request to have the opportunity to cross-examine Ritchie was denied, the adjustment committee found Jenkins guilty of both charges and punished him by placing him in disciplinary segregation for two years and stripping him of eight years of non-restorable good-time credit.

Following the trial court's dismissal of his declaration of rights action, in No. 2005-CA-000664-MR, this Court reversed the trial court after concluding that Jenkins' due process rights were violated by the adjustment committee's failure to permit him to cross-examine Ritchie due to the importance of her testimony.

On July 25, 2006, after the conducting of a new disciplinary hearing, in which Ritchie did testify, Jenkins was again found guilty of both charges and received the identical punishment he received as a result of his first disciplinary proceeding. After the denial of his declaration of rights action in the trial court, this appeal followed.

Jenkins first contends that he was denied due process when the adjustment committee used an invalid disciplinary report pursuant to Corrections Policy and Procedure (CCP) 15.6 (C) (2) (g). Specifically, he contends that his disciplinary report was not in compliance with prison policies because it did not contain verified facts written by the witnessing officer, did not contain all of the "pertinent data," and was signed by someone other than the witnessing officer.

Prison inmates subjected to disciplinary proceedings are not entitled to the full panoply of rights as other non-institutionalized individuals who are called to answer for similar (improper) conduct. *Wolff v. McDonnell*, 418 U.S. 539, 561-562, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Prison inmates

only need to be provided with a minimum standard of due process.

*Smith v. O'Dea*, 939 S.W.2d 353, 357 (Ky.App. 1997).

To satisfy the minimum due process rights of a prisoner during a disciplinary proceeding, the state is required to provide advance written notice of the charges; provide an opportunity to call witnesses and present evidence when consistent with institutional safety and correctional goals; and to provide a written statement from the fact finder 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, 86 L.Ed.2d 356 (1985).

After reviewing the record, we conclude that Jenkins' due process rights were not violated. First, prison regulations do not require that a witnessing officer write the disciplinary report rather the writer of the report need only verify the documented facts. CCP 15.6 (C ) (1) (a). Next, the second disciplinary report contained substantially identical facts as found in the original disciplinary which was signed by Ritchie, the witnessing officer.

Most importantly, during the hearing, Jenkins was permitted to cross-examine Ritchie, contest the disciplinary report, and present evidence in his own defense. Yet, on appeal, he has failed to state what evidence was untrue and unverified, and what "pertinent data" was absent from the disciplinary report. Essentially, he has failed to cast doubt

on the correctness of the committee's finding that he was indeed guilty of the attack.

On appellate review, the standard of judicial review of a prison disciplinary committee's findings of fact is the "some evidence" standard of review. *Smith*, 939 S.W.2d at 358. The some evidence standard of review does not require that an adjustment committee's fact-finding be supported by compelling evidence but rather evidence that will support a reasonable inference of guilt. *Id.* at 357. Under this standard, because Ritchie's testimony was credible and unchanged, we conclude that the adjustment committee utilized appropriate facts in determining Jenkins' guilt.

Jenkins next contends that his due process rights were violated when Lt. Antosh presided over his disciplinary hearing despite being involved in investigating Ritchie's allegations during the first disciplinary hearing. Thus, he contends that Lt. Antosh's prior involvement deprived him of a fair and impartial hearing.

However, from our review of the record, Lt. Antosh did not participate in the investigation of Ritchie's assault. Further, Jenkins has pointed to no specific references in the record to validate his contention that Lt. Antosh participated at any phase of the investigation that concluded in Jenkins' guilt. Accordingly, his factual contention is incorrect and, thus, not an appropriate ground for relief.

Jenkins next contends that his due process rights were violated when Ron Fletcher, who served on the adjustment committee during Jenkins' first disciplinary hearing, was permitted to be a member of the adjustment committee for Jenkins' second disciplinary hearing before recusing himself and remaining at the proceeding. Thus, he contends that Fletcher's previous involvement in his case violated prison policies and deprived him of a fair and impartial hearing.

After reviewing the record, Fletcher recused himself from his seat on the adjustment committee when he recognized the conflict of interest, and another prison official was seated in his place. Thus, Fletcher played no part in determining Jenkins' guilt or innocence. Accordingly, we fail to see how Jenkins was denied a fair and impartial hearing.

For the foregoing reasons, the order of the Lyon Circuit Court dismissing Jenkins' petition for a declaration of rights is affirmed.

ALL CONCUR.

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