

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000881-MR

LASHANE MORRIS

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 06-CI-00245

JOHN T. MOTLEY

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

** ** *

BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

THOMPSON, JUDGE: LaShane Morris, an inmate at the Eastern Kentucky Correctional Complex (EKCC), appeals the Morgan Circuit Court's dismissal of his declaratory judgment action in which he requested a review of his disciplinary

proceeding. For the reasons set forth herein, we affirm in part, reverse in part, and remand this matter for further proceedings.

On March 22, 2006, prison authorities searched Morris' cell and discovered two blank prescription pads and a romantic letter addressed to a prison nurse. The letter indicated that its author was physically attracted to and desired an intimate relationship with this prison employee. Subsequently, Morris was charged with possession of dangerous contraband and with pursuing a relationship, unrelated to correctional activities, with a non-inmate.

On May 1, 2006, following a disciplinary hearing, an EKCC adjustment committee found Morris guilty of both charges and punished him by placing him in disciplinary segregation for 135 days and divesting him of 240 days of good-time credit. After the denial of his declaration of rights action in the trial court, this appeal followed.

Morris contends that he was denied due process when prison authorities prevented him from inspecting the prescription pads and the romantic letter. Specifically, he contends that he was prevented from preparing a meaningful defense due to prison officials' failure to produce any documentary evidence for his review. We disagree.

Prison inmates in disciplinary proceedings are not entitled to the complete array of rights as non-institutionalized individuals who are called to answer for impermissible conduct. *Wolff v. McDonnell*, 418 U.S. 539, 561-562, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Prison inmates are provided only with a

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

The minimum due process rights of prisoners are satisfied when the inmate is provided with advance written notice of his charges; provided with an opportunity to call witnesses and present evidence when consistent with institutional safety and correctional goals; and provided with 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 Morris' due process rights were not violated. Morris was provided with advance written notice of his charges, provided with an opportunity to present his defense, and provided with a written statement citing the evidence relied on and the reasons for his punishment.

Moreover, Morris' factual contentions do not constitute a deprivation of his due process rights. Morris stated he possessed the letter merely to review its contents in order to provide personal input to its author, a fellow inmate. Morris further stated that a nurse gave him the two prescription pads although this was denied by a member of the nursing staff. Accordingly, the prison's failure to produce the letter and prescription pads did not deprive him of the ability to present an adequate defense because he was well aware of the form and substance of the evidence against him.

Morris next contends that his due process rights were violated when he was found guilty despite there being insufficient evidence against him.

Specifically, because the letter and prescription pads were not introduced against him, he contends there was insufficient evidence to find him guilty. We disagree.

The standard of review of a prison disciplinary committee's findings of fact is the "some evidence" standard. *Smith*, 939 S.W.2d at 358. This standard does not require that an adjustment committee's fact-finding be supported beyond all reasonable doubt or even by compelling evidence but only evidence that will support a reasonable inference of guilt. *Id.* at 357.

Prison authorities found a romantic letter in Morris' cell. Morris admitted possession of this item but asserted an explanation for its possession. The letter established that Morris desired an intimate relationship with a non-inmate. Additionally, he admitted to possessing the prescription drug pads. Consequently, there was clearly some evidence to support the adjustment committee's findings with respect to his pursuit of a relationship with a non-inmate and possession of the pads.

Morris next contends that his due process rights were violated when he was denied the right to call Lieutenant Daniel King as a witness regarding the pursuing a relationship charge. However, as provided in his appeal of this particular charge to the warden, the record demonstrates that Morris was permitted to call other witnesses, including the inmate who he claimed penned the letter, to establish his defense.

While an inmate can call witnesses in his defense, this ability does not permit an inmate to call any witness but only those necessary to provide an adequate defense within the context of minimum due process. Furthermore, a disciplinary committee has broad discretion to allow or deny an inmate's request to call witnesses. *Baxter v. Palmigiano*, 425 U.S. 308, 322, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976). Therefore, Morris was not denied the right to present an adequate defense to the charge of pursuing a relationship.

Morris next contends that his due process rights were also violated when he was excessively charged with possession of dangerous contraband. Specifically, he contends that blank prescription pads do not fall under the purview of the definition of dangerous contraband as defined by the Department of Corrections. We agree.

Kentucky Corrections Policy and Procedures (CPP) 9.6(I) provides the definition of dangerous contraband can be found in KRS 520.010 and that dangerous contraband includes items described in subsection II.A of CPP 9.6. KRS 520.010(3) provides the following:

‘Dangerous contraband’ means contraband which is capable of use to endanger the safety or security of a detention facility or persons therein, including, but not limited to, dangerous instruments as defined in KRS 500.080, any controlled substances, any quantity of an alcoholic beverage, and any quantity of marijuana, and saws, files, and similar metal cutting instruments.

Further, Subsection II. A of CPP 9.6 lists the following items as dangerous contraband:

1. Any gun, firearm, weapon, sharp instrument, knife, unauthorized tool, or any other object which may be used to do bodily harm or facilitate escape.
2. Any explosive or any ammunition.
3. Any amount of a controlled substance or any quantity of marijuana.
4. Any drug paraphernalia capable of administering an injection.
5. Any intoxicating substance including beer, alcohol, paint thinner, whiskey, wine, home brew, and cleaning fluid.
6. Any staff clothing, badge, official patch, institutional or Corrections staff identification or any imitation or forgery thereof.

In the instant matter, Morris was found in possession of two blank prescription pads and charged with possession of dangerous contraband. However, under no interpretation can blank prescription pads constitute dangerous contraband. Blank prescription pads do not fit within the scope of KRS 520.010(3) or even resemble the items listed in Subsection II. A of CPP 9.6.

However, blank prescription pads do fall within the purview of contraband. CPP 9.6(I) provides the definition of contraband can be found in KRS 520.010 and includes items described in subsection II.B of CPP 9.6. KRS 520.010(1) provides the following:

‘Contraband’ means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, departmental regulation, or posted institutional rule or order.

Further, Subsection II. B(3) of CPP 9.6 provides that “[a]nything not authorized for retention or receipt by the inmate and not issued to him through regular institutional channels” constitutes contraband. Moreover, Subsection II. B(7) and (8) provides that unauthorized prescription medication is contraband.

After analyzing the applicable laws, prescription medication pads constitute contraband rather than dangerous contraband. Clearly, prescription pads were not intended to be within the purview of the definition of dangerous contraband which applies to controlled substances and alcohol in the context of drugs.¹ Therefore, Morris could not be charged and found guilty of possessing dangerous contraband when he only possessed contraband.

For the foregoing reasons, the order of the Morgan Circuit Court dismissing Morris’ petition is affirmed in part, reversed in part, and remanded with directions to the trial court to remand this matter to appellee to discipline Morris in conformity with this opinion.

ALL CONCUR.

¹ Obviously, dangerous contraband is not limited to controlled substances and alcohol. Our issue in this case, however, is limited to prescription pads and their connection to prescription drugs under current policy. Furthermore, as noted previously in this opinion, some prescription drugs would constitute dangerous contraband if they were defined as controlled substances by prison policies.

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