

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-000882-MR

LASHANE MORRIS

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 06-CI-00249

JOHN T. MOTLEY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

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 the review of his disciplinary proceeding. For the reasons set forth herein, we affirm.

On June 4, 2006, Morris' cell was searched, and prison authorities discovered thirty-five postage stamps in his cell. However, prison policies only permit an inmate a maximum of twenty stamps while in administrative segregation. Consequently, prison authorities confiscated fifteen stamps and charged Morris with smuggling contraband into, out of, or within the institution.

On July 25, 2006, an EKCC adjustment committee conducted a disciplinary hearing to consider the charge against Morris. Following the hearing, the adjustment committee found Morris guilty of smuggling contraband and punished him by placing him in disciplinary segregation for forty-five days and stripping him of sixty 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 the adjustment committee found him guilty of a crime that he could not have committed. Specifically, he contends that his actions did not meet all of the elements of smuggling because prison authorities failed to prove that he moved the stamps to different locations within the prison. Thus, he contends he could not have been found guilty beyond all reasonable doubt of smuggling contraband.

Despite Morris' invocation of the reasonable doubt constitutional standard, prisoners subjected to disciplinary proceedings are not entitled to the full panoply 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). Rather, prison inmates are simply 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 prisoners during disciplinary proceedings, 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).

Furthermore, 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. This standard of review does not require that an adjustment committee's fact-finding be supported by the evidence beyond all reasonable doubt or even by compelling evidence but rather evidence that will support a reasonable inference of guilt. *Id.* at 357.

After reviewing the record, we conclude that Morris was properly found guilty. Although he contends that "in order for [him] to be charged with the offense of smuggling he would have to be caught in the act or attempting to bring the stamps [within the institution]," the discovery of stamps within his cell provided prison authorities with some evidence sufficient to support a reasonable inference that Morris smuggled stamps within the institution.

Morris next contends that his due process rights were violated when prison authorities charged him in violation of Corrections Policy and Procedures (CPP) 15.6(II)(C)(4)(b)(2)(d). Specifically, he contends prison authorities failed to assign (charge) the most appropriate violation for his actions as required by the above cited provision.

Despite his contention that he should have been charged with a lesser violation, prison authorities properly charged him in accordance with the CPP. Just as prosecutors in criminal proceedings, prison authorities have broad discretion in deciding the appropriate violations to assign based on their review of the unique facts of each case. Morris' conduct was within the scope of a smuggling violation; thus, he cannot validly claim that the above cited provision was violated.¹

Morris next contends stamps do not fall under the definition of contraband according to CPP 9.6(II)(B). However, while CPP 9.6(II)(B) does not specifically list stamps as contraband, CPP 9.6(I) provides that contraband also includes items defined as contraband pursuant to KRS 520.010. KRS 520.010(1) provides that 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."

Accordingly, when Morris possessed an impermissible number of postage stamps, the excessive stamps became illegal and constituted contraband for

¹ Morris' brief contains four contentions but the first and the fourth are materially the same.

purposes of CCP 9.6 (I) and 15.2. Therefore, Morris was properly charged and found guilty of smuggling contraband.

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

ALL CONCUR.

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