

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2007-CA-001120-MR

WILLIAM DOUGLAS LUDWIG

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 06-CI-00921

LARRY CHANDLER; LT. MAZZA;  
LT. CARLOS SHANTZ; AND  
DR. STEVEN WHITE

APPELLEES

### OPINION AFFIRMING

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

KNOPF, SENIOR JUDGE: William Ludwig appeals from the denial of his motion for a declaratory judgment by the Oldham Circuit Court. For the following reasons, we affirm.

The facts are as follows. On May 23, 2006, correctional officers Lt. Chris Kampschafer and David Woodard collected a urine sample from Ludwig, a prisoner at the Kentucky State Reformatory (KSR). The urine sample was sent to Aegis Scientific

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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 KRS 21.580.

Corporation for analysis. The urine tested positive for cocaine, opiates and codeine, and subsequently, Ludwig was charged with three counts of unauthorized use of drugs or intoxicants. After he was charged, Ludwig was provided with a copy of the lab report and the disciplinary write-up. At that time, Ludwig requested that Dr. Steven White, a treating physician, be present at his hearing to testify that he had been taking “trigger point” injections as an explanation for the positive lab report.

A hearing was conducted by an adjustment officer on August 15, 2006, and Ludwig was found guilty on all three charges and received 135 days segregation and forfeiture of 180 days of non-restorable good-time credit. Dr. White provided documentation before the hearing that showed Ludwig had not received any of these injections since February 2006 and that “there was not even a small chance that [the injections] would affect a drug screen test taken in the last several weeks.”

Ludwig appealed to the warden, Larry Chandler, who upheld the charges on August 28, 2006. Ludwig then filed a motion for a declaratory judgment in Oldham Circuit Court on December 11, 2006, in which he sought to dismiss the charges against him alleging that he was denied his rights of due process because the prison authorities failed to establish a proper chain of custody. The motion for declaratory judgment was denied on April 18, 2007. The trial court held that the chain of custody documentation of Ludwig’s urine sample complied with all of the constitutional mandates. The trial court stated that, “the reliability of the test result was established allowing it to support the conviction for unauthorized use of drugs,” and accordingly, no violation of policy or due process occurred. This appeal followed.

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).

The Supreme Court also held that procedural due process 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 Corr. Inst., 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)). Kentucky law requires a sufficient chain of custody for a urine sample sent for drug testing for the purpose of demonstrating that such results are reliable evidence of unauthorized drug use. *Byerly v. Ashley*, 825 S.W.2d 286 (Ky. App. 1991); *Lucas v. Voirol*, 136 S.W.3d 477 (Ky. App. 2004).

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

Ludwig asserts that the chain of custody was improper concerning his urine sample. However, the record shows that all of the necessary signatures were included on the “custody and control form.” The urine sample was then shipped to the lab for testing, and the record shows documentation of all employees of the lab who handled Ludwig’s urine sample.

Similar to the facts in *Lucas* and in contrast to the facts of *Byerly*, the chain of custody, in this case, was sufficient because it accounted for each person who handled the sample during testing. This Court, in *Byerly*, held that the chain of custody was not complete because there was no evidence in the record regarding the receipt of the urine sample by the laboratory, and thus, the sample was rendered unreliable. 825 S.W.2d at 288. However, here, the record shows that Ludwig’s urine sample was accounted for at every step in the testing process. Therefore, we can find no violation of policy or due process in regards to the disciplinary proceeding.

The judgment of the Oldham Circuit Court is affirmed.

ALL CONCUR.

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