

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001725-MR

KAREEM EDWARDS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE C.A. WOODALL, III, JUDGE
ACTION NO. 18-CI-00022

KENTUCKY DEPARTMENT OF CORRECTIONS,
JAMES L. ERWIN, COMMISSIONER, AND
RANDY WHITE, WARDEN

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, JONES, AND K. THOMPSON, JUDGES.

ACREE, JUDGE: Kareem Edwards, *pro se*, appeals the Lyon Circuit Court's order dismissing his petition for declaratory judgment which he filed to appeal a disciplinary decision while incarcerated at the Kentucky State Penitentiary (KSP). Edwards alleges multiple due process violations. Finding no error, we affirm.

BACKGROUND

The facts of this case are relatively straightforward. On June 29, 2017, a riot ensued at the KSP resulting in a lockdown lasting more than a week. Edwards, a KSP prisoner, participated in the riot and assaulted three KSP staff members during and after the riot. Edwards was cited for five separate disciplinary violations and received written notice as to each.

A KSP adjustment committee adjudicated the citations, found Edwards guilty, and set punishment at thirty days of restricted housing and 1,460 non-restorable good time days lost. The warden affirmed the decision.

Edwards filed a petition for declaratory judgment in Lyon Circuit Court alleging he did not receive due process because: (1) he was unable to call witnesses; (2) the committee members did not view the camera footage of the riot; (3) he was unable to review requested documents; (4) his legal aide representative was unable to present his defense; (5) he did not have an impartial decision-maker; (6) the committee improperly utilized the “some evidence” standard; and (7) he was denied access to reports used to convict him. The circuit court dismissed the petition. It determined Edwards received due process and failed to state a claim for which relief could be granted. This appeal followed.

STANDARD OF REVIEW

A petition for declaratory judgment pursuant to KRS¹ 418.040 has become the vehicle, whenever habeas corpus proceedings are inappropriate, where inmates may seek review of their disputes with the corrections department. *Polsgrove v. Kentucky Bureau of Corrections*, 559 S.W.2d 736 (Ky. 1977); *Graham v. O’Dea*, 876 S.W.2d 621 (Ky. App. 1994). Although they are technically original actions, inmate petitions share many attributes of an appeal, including invoking the circuit court’s authority to act as a court of review. With due deference to the committee and warden, the circuit court ensures the disciplinary order comports with the applicable legal restrictions. *See American Beauty Homes Corp. v. Louisville & Jefferson County Planning and Zoning Comm’n*, 379 S.W.2d 450 (Ky. 1964).

A defendant in a prison disciplinary proceeding is not entitled to “the full panoply of rights due a defendant” under the Due Process Clauses of the United States and Kentucky Constitutions. *See Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974); *Smith v. O’Dea*, 939 S.W.2d 353, 357-58 (Ky. App. 1997). In general, the minimal due process requirements in a prison disciplinary hearing include: (1) advance written notice of the claimed violation; (2) an opportunity to call witnesses and present a defense “when

¹ Kentucky Revised Statutes.

permitting [the inmate] to do so will not be unduly hazardous to institutional safety or correctional goals”; and (3) a written statement by the tribunal detailing the evidence relied upon and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 566, 94 S.Ct at 2979; *Webb v. Sharp*, 223 S.W.3d 113, 117-18 (Ky. 2007).

Further, these due process requirements are met “if some evidence supports the decision by the prison disciplinary board[.]” *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985). “[T]he relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.*, 472 U.S. at 455-56, 105 S.Ct. at 2774 (citations omitted).

ANALYSIS

According to Edwards, he timely requested multiple witnesses to testify on his behalf. He claims these witnesses would give essential testimony regarding his innocence but, he claims, the warden denied him the right to call the witnesses and gave no reason for doing so. We disagree.

The record is devoid of any evidence that Edwards requested witnesses. In fact, the evidence supports the opposite conclusion. On every disciplinary report form, Edwards left the “Witness” section blank – even though he had the opportunity to fill in the request. (Record (R.) at 33, 36, 47, 58.) Every disciplinary report form clearly stated, “[Edwards] was advised of [his] right to call

witnesses and to have an inmate legal aide or staff representative present at [his] hearing. [Edwards] understands that it is [his] responsibility to make arrangements for inmate legal aide representation and witnesses.” As indicated on the form, Edwards received a copy. He was aware it was his responsibility to arrange for witnesses. We find no violation of due process here.

Edwards also contends the camera footage was only viewed by the investigating officer, not the committee members. This claim does not fall squarely within Edwards’s limited due process rights; however, his argument is not supported by the record. The record states, “Committee did review the footage and finds that it does corroborate with the investigation.” (R. at 40, 43, 50, 53, 69.) Edwards points to nothing contradictory in the record. We find no error.

Edwards asserts he was denied access to certain documentary evidence such as: (1) emergency occurrence reports; (2) incident reports; (3) information reports; and (4) any other reports relied upon by the Committee. He believes this violates CPP² 15.6(II)(D)(2)(c), which provides that “[c]onsideration of those documents or a summary of those documents [are] provided to the inmate at least twenty-four (24) hours before the hearing.” He also believes the committee committed error by using these documents after he was denied access to them.

² Kentucky Corrections Policies and Procedures.

Edwards submitted a records request on August 25, 2017. He requested: (1) information reports; (2) emergency occurrence reports; (3) witness statements; (4) incident reports; (5) camera footage; (6) any and all other relevant documentation; (7) medical records for staff and inmates; and (8) his medical records. KSP responded and told Edwards it needed additional time to retrieve and review the records. However, KSP denied parts of Edwards's request for cause. Certain records were considered "intelligence" that, if provided to Edwards, would compromise investigatory sources and techniques. He was denied the opportunity to view the camera footage because it was considered a "security threat." And KSP could not release staff member medical records without an unwarranted invasion of their personal privacy. However, Edwards received the incident reports, detention orders, behavioral control forms, and his own medical records.

As stated in CPP 15.6(II)(D)(2)(c), documents may be withheld if the inmate is provided with "the reason for failure to make these documents available to him" and the reasons are "made a part of the record of the proceedings." The record clearly indicates the reasons Edwards was denied certain documents. KSP relied on relevant authority to deny access. KRS 61.878(1)(a); (1)(h); (1)(l); KRS 197.025(1). We find no due process violation occurred here. KSP was well within its authority to deny Edwards access to the documents he requested. It fully complied with CPP 15.6(II)(D)(2)(c).

Edwards also believes he was denied due process because his legal aide representative was not allowed to present a defense. If true, this would violate the *Wolff* due process requirements. However, the record refutes Edwards's claim. We reviewed the record and determined that Edwards did receive the benefit of a representative and he was fully able to present a defense. Every hearing report indicates Edwards and his legal aide representative were present. The function of the legal aide representative is to "aid the inmate in preparing and presenting a defense." CPP 15.6(II)(B)(3)(a). Edwards was able to make statements and did. This is indicated in the committee's findings, proving he had an opportunity to defend his actions. The legal aide representative is a mere assistant to Edwards in presenting his case; the representative was not required to advocate and present the case on behalf of Edwards. Edwards provides no evidence to support his position.

Edwards contends the decision-maker was not impartial. He believes the adjudicators' impartiality was compromised by heightened anxiety of prison workers following the riot. Again, Edwards does not support his argument. He has directed this Court to nothing in the record to support a claim of partiality or impropriety of the decision-makers.

Lastly, Edwards complains he was denied due process because the committee did not explain the reliability of the confidential information used to reach its decision. When confidential information is the basis for a prison

disciplinary proceeding, the disciplinary board is required to provide the reliability of the information provided by the confidential informant. *Haney v. Thomas*, 406 S.W.3d 823, 826 (Ky. 2013). Reliability requires “some corroborating factors, however small[, and] . . . there are numerous ways the Adjustment Committee may establish the reliability of information provided by a confidential informant.” *Id.* at 827. The video of Edwards assaulting staff is more than sufficient corroboration of the confidential information’s reliability to satisfy the requirement that “some evidence in the record to support the Adjustment Committee’s finding that the information obtained from the informant is reliable.” *Id.* Disregarding the confidential information, the videotape itself satisfied the “some evidence” requirement to affirm the disciplinary report and order.

CONCLUSION

Based on the foregoing analysis, we affirm the September 27, 2018, order of the Lyon Circuit Court dismissing Edwards’s petition for a declaration of rights.

ALL CONCUR.

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