

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000359-MR

DAVID THOMAS COHRON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 18-CI-01024

KENTUCKY DEPARTMENT OF
CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, DIXON, AND JONES, JUDGES.

ACREE, JUDGE: David Thomas Cohron, *pro se*, appeals the Franklin Circuit Court’s denial of his Petition for Declaratory Judgment. He argues the circuit court erroneously denied his petition because there is not “some evidence” to support the circuit court’s findings. Finding no error, we affirm.

BACKGROUND

Cohron is currently incarcerated at the Kentucky State Reformatory (KSR). While serving his sentence, a hand-written “Parle Book” was found in his possession.¹ An investigation commenced. Cohron informed officers the book was just his hand-written copy of football schedules containing dates and scores to keep track of teams he followed. Notwithstanding his explanation, the investigation resulted in charges against him for gambling or being in possession of gambling paraphernalia. After his hearing on December 8, 2017, the adjustment officer found Cohron guilty and ordered a fifteen-day assignment to disciplinary segregation and forfeiture of thirty days of good time.

Cohron appealed by filing a Petition for Declaratory Judgment in Franklin Circuit Court challenging the disciplinary process. In response to his petition, the Kentucky Department of Corrections filed a motion to dismiss.² The circuit court granted the motion, finding Cohron was given due process and that the Parle Book constituted “some evidence.” This appeal followed.

¹ The term “Parle Book” is not defined specifically by the parties, but it is the tool of the “bookie”; *i.e.*, it is one of the books a bookmaker makes.

² The original motion to dismiss was denied because the attached Parle Book exhibit was illegible. The Kentucky Department of Corrections then filed a “Renewed Motion to Dismiss,” which contained a legible exhibit.

STANDARD OF REVIEW

In *Smith v. O'Dea*, this Court adopted the “some evidence” standard of review for prison disciplinary proceedings expressed by the Supreme Court of the United States in *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). 939 S.W.2d 353, 358 (Ky. App. 1997). In *Walpole*, the Supreme Court held that:

the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if “there was some evidence from which the conclusion of the administrative tribunal could be deduced. . . .” Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

Walpole, 472 U.S. at 455-56, 105 S. Ct. at 2774 (citations omitted).

ANALYSIS

Cohron argues he was denied due process because the adjustment officer did not review the Parle Book upon his request. However, Cohron points to no evidence supporting his argument. After reviewing the disciplinary report, we find the adjustment officer did review the Parle Book because the report expressly says so immediately before stating its holding. (Record (R.) at 31). That the

adjustment officer was not persuaded by Cohron's argument that the Parle Book was not what it appeared to be does not affect the analysis.

Due process proceedings require: "(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 [an inmate's] defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action." *Id.*, 472 U.S. at 454, 105 S. Ct. at 2773. Cohron received the process he was due. Cohron had notice of the disciplinary charge, had the right to call witnesses and present evidence, and received a written statement by the factfinder, all in compliance with *Walpole*.

Moreover, the evidence relied upon by the adjustment officer met the "some evidence" standard. As stated above, this standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced. . . ." *Id.*, 472 U.S. at 455, 105 S. Ct. at 2774 (citation omitted). The Parle Book itself is "some evidence" to support the finding that Cohron is guilty of gambling or possessing gambling paraphernalia. The pages of the Parle Book are handmade and document the games played by Alabama and Auburn. (R. at 69). It includes columns for the (1) opponents; (2) date of the game; (3) score; (4) win or loss; and (5) the spread. The "spread" column is important in the context of

gambling on college football games. *Id.* This is more than enough evidence to meet the standard.

CONCLUSION

For the foregoing reasons, we affirm the Franklin Circuit Court's denial of Cohron's Petition for Declaratory Judgment.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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