

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-001023-MR

BRYAN LEE REINHARDT

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
CIVIL ACTION NO. 05-CI-00417

CAROLINE W. MUDD, WARDEN;
LT. SHAWN GAITHER; TAMMY KIMBLER;
and AMY YOUNG

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER¹ AND DIXON, JUDGES; PAISLEY,² SENIOR JUDGE.

DIXON, JUDGE: Bryan Lee Reinhardt, an inmate at the Kentucky State Penitentiary, appeals *pro se* to this Court from the Marion Circuit Court's dismissal of his petition for a declaration of rights concerning a prison disciplinary matter. Because we find

¹ Judge David A. Barber concurred in this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Reinhardt suffered no deprivation of his constitutional rights, we affirm the trial court's order of dismissal.

Before addressing the facts of this appeal, Reinhardt raises a procedural issue for our review. Reinhardt requests this Court strike the Appellees' brief for failure to comply with Kentucky Rules of Civil Procedure (CR) 76.12, because the requisite "Counterstatement of Points and Authorities" is omitted. We acknowledge that this Court may strike an appellate brief for failure to comply with procedural requirements. CR 76.12(8). However, we do not find the Appellees' brief to be so deficient that such a drastic penalty is warranted. The brief is otherwise intelligible, and this Court is able to comprehend the arguments set forth by the Appellees. Accordingly, we decline to strike the Appellees' brief due to procedural infirmity.

On May 26, 2005, while incarcerated at the Marion Adjustment Center, Reinhardt was questioned about his involvement in an attack on another inmate, Russell Hansbrough. Hansbrough sustained a broken jaw, and he told the investigating officer that Reinhardt and a second inmate, James Hunter, attacked him. Reinhardt received a disciplinary write-up for inflicting serious injury on a fellow inmate and pleaded not guilty to the charge. A hearing was held before the prison's

disciplinary adjustment committee, and an inmate legal aide assisted Reinhardt. The committee found Reinhardt guilty of the charge and fixed his punishment at 180 days in disciplinary segregation and loss of two years' good time credit. Reinhardt appealed the committee's decision to the Warden of Marion Adjustment Center. The Warden upheld the findings of the adjustment committee and stated there were no due process violations.

Reinhardt filed a petition for a declaration of rights in Marion Circuit Court alleging procedural due process of law violations at his disciplinary hearing. The circuit court determined Reinhardt was not entitled to relief and dismissed the petition. Reinhardt now appeals to this Court.

A prison disciplinary hearing where an inmate's good time credit is at risk must comply with procedural due process of law. Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). At minimum, the prisoner is entitled to written notice of the charges, the opportunity to present evidence in his defense, and a report by the committee of its reasoning and conclusions. Id. at 564-66, 94 S.Ct at 2978-2980. In a subsequent case, the Supreme Court explained:

[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. . . . 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.

Superintendent, Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985) hereinafter MCI v. Hill. Indeed, this Court has acknowledged United States Supreme Court precedent and held "that the 'some evidence' standard of review provides courts with a sufficient check upon adjustment committee fact-finding." Smith v. O'Dea, 939 S.W.2d 353, 358 (Ky. App. 1997).

Reinhardt contends on appeal that his right to procedural due process was violated when the adjustment committee denied several witnesses Reinhardt requested testify at the hearing. Reinhardt also argues the circuit court erred by applying the "some evidence" standard enunciated in MCI v. Hill rather than reviewing his claims under the administrative rules promulgated in Kentucky Corrections Policy and Procedure § 15.6 (CPP).

We find that the circuit court appropriately reviewed Reinhardt's claims under the standard of MCI v. Hill. As stated above, the circuit court's role is to determine whether "some evidence" supports the adjustment committee's decision, and the court is not required to conduct an independent investigation of

the evidence. MCI v. Hill, 472 U.S. at 455-56, 105 S.Ct. at 2774. At any rate, we also note that Reinhardt's alleged CPP violations are without merit, as none of the procedural rights guaranteed under the CPP were violated.

We also agree with the trial court's assertion that there is some evidence in the administrative record to support the decision of the adjustment committee. Reinhardt was allowed to call two witnesses in his defense. The other witnesses he requested were denied by the committee as irrelevant to the proceeding. The United States Supreme Court has advised:

Ordinarily, the right to present evidence is basic to a fair hearing; but the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution. We should not be too ready to exercise oversight and put aside the judgment of prison administrators. It may be that an individual threatened with serious sanctions would normally be entitled to present witnesses and relevant documentary evidence; but here we must balance the inmate's interest in avoiding loss of good time against the needs of the prison, and some amount of flexibility and accommodation is required. Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the Committee to

state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases.

Wolff v. McDonnell, 418 U.S. at 566, 94 S.Ct. at 2979-2980.

After a review of the record, we find there was evidence before the adjustment committee to support finding Reinhardt guilty of physical action against an inmate resulting in serious injury. Accordingly, the trial court properly dismissed Reinhardt's petition for a declaration of rights.

For the foregoing reasons the order of Marion Circuit Court is affirmed.

BARBER, JUDGE, CONCURS.

PAISLEY, SENIOR JUDGE, DISSENTS AND FILES SEPARATE OPINION.

PAISLEY, SENIOR JUDGE, DISSENTING: I respectfully dissent. At the hearing before the adjustment committee the Appellant attempted to call as witnesses the inmate he allegedly assaulted and a Mrs. Alexander, who, he claims, could confirm that he was in the prison law office at the time of the assault. While a prison disciplinary committee may curtail an inmate's right to call witnesses if calling the witness would cause a security problem or interfere with correctional goals, there has been no showing in this case that allowing the calling of these witnesses would cause such a result. There are obviously legitimate reasons why Appellant would want to introduce

testimony from the alleged victim and from a purported alibi witness. While I recognize that "some evidence" is the rule, fundamental fairness requires that the evidence underlying the committee's decision be reliable. I believe the Adjustment Committee abused its discretion by not allowing Reinhardt to call these witnesses. I would reverse the circuit court and direct it to remand this matter to the Adjustment Committee for further proceedings.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE

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