

RENDERED: AUGUST 17, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

**SUPREME COURT ORDERED OPINION NOT PUBLISHED:
SEPTEMBER 10, 2008
(FILE NO. 2007-SC-0843-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-000956-MR

JAMES VESTAL

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 05-CI-00197

JOHN MOTLEY; JOHN REES; AND THE
KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION AFFIRMING

** ** * * * **

BEFORE: LAMBERT, MOORE, AND NICKELL, JUDGES.

NICKELL, JUDGE: James William Vestal (hereinafter “Vestal”), an inmate at the Eastern Kentucky Correctional Complex (hereinafter “EKCC”), appeals *pro se*, from two orders of the Franklin Circuit Court, one dated April 6, 2005, dismissing his petition for

declaratory judgment, and another dated April 25, 2005, denying a motion to amend the judgment and compel discovery. Because the trial court committed no error, we affirm.

Vestal is an inmate housed at EKCC in West Liberty, Kentucky. His complaint centers around a memorandum EKCC Warden John Motley issued to staff and inmates on January 17, 2003, stating:

A clarification is required pertaining to recent controversy concerning Canteen receipts, as related to perishable items (to include canned goods, food, cigarettes, etc.).

An inmate must have a valid canteen receipt for all perishable items in his possession that is not more than 60 days old. This will allow 60 days for the consumption of perishable items purchased.

Requiring this time frame allows ample opportunity for the inmate to utilize the product while negating the “hoarding” of items obtained through illegal activities such as bartering, gambling, etc.

On June 24, 2004, Vestal filed an inmate grievance claiming the memorandum wrongly revised Kentucky Corrections Policies and Procedures (CPP) 17.1¹ to require inmates to keep receipts for canteen purchases and to require that certain purchases, including tobacco, be consumed within 60 days. Vestal complained that the memorandum authorized staff to invalidate canteen receipts that were more than 60 days old and to use the memorandum as grounds for charging inmates with rule infractions and imposing sanctions. He asked that the memorandum be rescinded and that CPP 17.1 be followed in its entirety.

¹ CPP 17.1 is a multi-page policy detailing the property inmates may possess and how they may acquire it. Some of the items addressed in the policy include clothing, legal materials, personal mail, hobby-craft materials, linens, appliances (e.g. clock, fan, radio), musical instruments, toiletries, stationary, playing cards, and tobacco products.

The grievance was informally resolved on July 2, 2004, when an EKCC staff member concluded Vestal had not shown the memorandum violated CPP 17.1. Next, a five-member committee reviewed the memorandum on July 12, 2004. Finding no existing policies pertaining to receipts, the committee suggested Warden Motley review Vestal's grievance, which he did on July 29, 2004. Warden Motley found the memorandum complied with Kentucky Revised Statutes (KRS) 13A.130² and that it was unrelated to CPP 17.1 which was still being followed.

Vestal next appealed his grievance to Kentucky Department of Corrections (hereinafter "DOC") Commissioner John Rees on August 3, 2004. Vestal again argued the language of the memorandum was not "reflected in any portion of policy or procedure. Yet inmates are being required to abide by its language as though it was a portion of institutional policy." Commissioner Rees completed his review on August 30, 2004, writing in part:

CPP 15.2 lists the Categories of Rule Violations and Penalties, to include possession of unaccountable canteen items. The memorandum that Warden Motley issued requiring inmates to have a valid Canteen receipt for all perishable items in his possession not more than 60 days old is an attempt to control illegal activity associated with the acquisition of Canteen items. Inmates who do not engage in

² KRS 13A.130 limits the means by which an administrative body may act and the actions it may take. Specifically, KRS 13A.130(1) prohibits an administrative body from modifying, expanding upon or limiting a statute or administrative regulation via internal policy, memorandum or other action. Additionally, an administrative body may expand or limit a state or federal constitutional right, statutory right or administrative regulation only if it is authorized to do so by either the federal or the state constitution or a statute. If a memorandum or internal policy or some other action of an administrative body violates the letter or the spirit of KRS 13A.130, such measure or action is "null, void, and unenforceable." KRS 13A.130(2). However, nothing within the statute prohibits an administrative body from issuing an opinion or administrative decision that is statutorily authorized. KRS 13A.130(3).

that type of behavior should not have any trouble adhering to the requirements outlined in the memorandum. I concur with the Warden's review and see no need for further action in this matter.

Vestal did not appeal Commissioner Rees' response.

During a random cell search on October 7, 2004, Vestal could not produce a recent receipt³ for two packs of cigarettes and four pouches of tobacco. The items were seized and Vestal was charged with possessing "unaccountable canteen items," a Category IV-26 violation under CPP 15.2.⁴ On October 18, 2004, Vestal appeared before the EKCC Adjustment Committee where he was found guilty, the tobacco products for which he could not produce timely receipts were confiscated, and his telephone privileges were restricted for 30 days.

Vestal exhausted all administrative remedies before filing a petition for declaratory judgment on February 10, 2005, in the Franklin Circuit Court. Vestal claimed issuance of the memorandum violated state law because it improperly modified an administrative regulation via internal memorandum and denied him due process of law by depriving him of property rights in items he purchased from the canteen. Specifically, he argued Warden Motley's memorandum "created mandatory language not found in institutional policy . . . *i.e.*, inmates 'must have a valid canteen receipt for all perishable items in his possession that is not more than 60 days old[.]'" Vestal asked that the January 17, 2003, memorandum be rescinded, that the practice of invalidating canteen

³ Vestal produced receipts for the cigarettes and the tobacco but they were more than five months old.

⁴ CPP 15.2 sets forth various rule violations and penalties.

receipts be stopped, that he be reimbursed for the tobacco products confiscated from him,⁵ and that his institutional record be expunged of any infraction resulting from enforcement of the memorandum. The DOC responded March 18, 2005, stating the memorandum did not violate any administrative regulation and was merely a “housekeeping” measure since CPP 17.1 allows inmates to have reasonable amounts of canteen items but does not explain how those quantities will be managed. According to the DOC, Warden Motley’s memorandum merely required inmates to retain receipts for canteen items to show they were legally and properly obtained. The DOC urged the trial court to dismiss the petition for failure to state an actual controversy as required by KRS Chapter 418.⁶

On April 6, 2005, the trial court entered an order dismissing Vestal’s petition for declaratory judgment. In its ruling, the trial court stated Warden Motley’s memorandum complied with both statutory and administrative law.

The next day, April 7, 2005, Vestal submitted to the trial court a motion to amend his original complaint coupled with a request for injunctive relief. He claimed the amendment was necessary so he could “present a clear and concise account of the facts.” He offered no explanation as to why his original pleading was flawed. The motion to amend the complaint was filed by the trial court on April 11, 2005, the same day the DOC filed a response opposing the motion to amend as being untimely. On April 18,

⁵ In a pleading filed with the trial court on April 11, 2005, Vestal listed the value of the tobacco products confiscated from him as approximately \$10.82.

⁶ KRS Chapter 418 pertains to summary proceedings and declaratory judgments. In particular, KRS 418.040 permits a plaintiff to seek a declaration of rights when it appears that an “actual controversy exists.”

2005, Vestal filed with the trial court a motion to alter, amend, or vacate judgment pursuant to CR 59.05 and a request for findings of fact and conclusions of law. On April 19, 2005, the DOC filed its response to the motion to amend judgment. The DOC opposed the motion since Vestal failed to offer any compelling reason to amend the judgment or to take discovery.⁷ The trial court denied the motion on April 25, 2005.

This appeal followed.

Vestal first contends that Warden Motley's memorandum violated KRS 13A.130 which prohibits an administrative body from modifying, expanding, or limiting a statute or administrative regulation via memorandum, internal policy, or other form of action. He further argues the trial court never ruled on this issue because the DOC rephrased his argument as a matter of inmate accountability and created a false issue on which the trial court ruled instead. We note that Vestal does not suggest Warden Motley could not require inmates to maintain current canteen receipts, only that he could not do so via a memorandum to staff and inmates. The DOC responds that the memorandum is just a reasonable "housekeeping" measure and it does not violate any established policy.

Absent clear error, we will not disturb the trial court's ruling. Kentucky Rules of Civil Procedure (CR) 52.01; *Baze v. Rees*, 217 S.W.3d 207, 210 (Ky. 2006). Finding no error, we affirm.

In *Young v. Willis*, 305 Ky. 201, 205, 203 S.W.2d 5, 7 (Ky. 1947), the Supreme Court of Kentucky recognized the value of administrative bodies and agencies. Due to the depth and breadth of government today, it is inefficient for the legislature to

⁷ Our review of the record did not reveal a request by Vestal for discovery.

try to do everything and do it well. Thus, it creates boards, agencies, and administrative bodies to carry out the day-to-day functions of government. So long as the legislature establishes the overriding principles and policies, it is entirely permissible to allow individual agencies to craft “the details of administration.” *Id.*

In Kentucky, the legislature has authorized the Department of Corrections to manage penal, reform, and correctional institutions. KRS 196.030(1)(a). CPP 17.1⁸ pertains to inmate personal property at all Kentucky correctional facilities and private prisons. It specifies both how prisoners acquire property and how much they may possess at any given time.⁹ It also forbids the sale, trade, or transfer of any item of personal property between inmates. CPP 17.1 (III)(f). Warden Motley’s memorandum does not prohibit the purchase, use, or possession of tobacco products, nor does it otherwise alter CPP 17.1. It requires only that an inmate have a recent canteen receipt for perishables in his possession. We hold Warden Motley’s memorandum to be reasonably related to penological objectives, as its expressed goal is to minimize hoarding, bartering, and gambling within the EKCC by controlling the amount of cigarettes and other items an inmate has at any particular time. As Commissioner Rees noted in his written review of Vestal’s grievance, “[i]nmates who do not engage in that type of behavior should not have any trouble adhering to the requirements outlined in the memorandum.”

⁸ Vestal attached a copy of CPP 17.1 to his petition for declaratory judgment. We note that the version he attached did not become effective until January 4, 2005, several months after his grievance was filed in June 2004. We further note that this version of the policy did not become effective until nearly two years after issuance of Warden Motley’s January 17, 2003, memo.

⁹ An inmate may possess up to 20 packs of cigarettes and 20 pouches of tobacco.

Maintaining order and control in a correctional facility presents unique challenges. As a result, deference and flexibility are afforded prison officials as they try “to manage a volatile environment.” *Mackey v. Dyke*, 111 F.3d 460, 463 (6th Cir. 1998). Moreover, “prison regulations [are] primarily designed to guide correctional officials in the administration of a prison” and not to “confer rights on inmates.” *Sandin v. Conner*, 515 U.S. 472, 481-482, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Those in the corrections field have recognized the need to prevent inmates from gambling and bartering canteen goods. CPP 17.1 already specifies the maximum number of cigarette packs and pouches of tobacco an inmate may possess at a single time. We do not see how requiring an inmate to maintain timely receipts and to contemplate his rate of consumption before purchasing tobacco products violates CPP 17.1 or encroaches on the powers of the legislature.

Upon reviewing both CPP 15.2 and CPP 17.1, we hold Warden Motley’s memorandum, dated January 17, 2003, was indeed a reasonable “housekeeping” measure as characterized by the DOC. As such, it did not alter the policies collected under 501 Kentucky Administrative Regulations (KAR) 6:020¹⁰ and it did not violate KRS 13A.130. Thus, we cannot say the trial court clearly erred in finding the memorandum complied with both statutory and administrative law. We therefore affirm the trial court’s denial of Vestal’s petition for a declaratory judgment.

¹⁰ 501 KAR 6:020(1) lists various policies and procedures adopted by the Kentucky Department of Corrections on a wide variety of topics ranging from news media access to inmate visits. Both CPP 15.2 and 17.1 fall within 501 KAR 6:020(1).

Vestal's other contention is that the trial court ignored CR 52.01 in failing to make findings of fact and conclusions of law. CR 52.01 reads in part:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment; and in granting or refusing temporary injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action.

This is not a case in which an action was tried without a jury or with an advisory jury. It was not tried at all. Nor was a temporary injunction granted or denied. This is a case in which the trial court dismissed a petition for declaratory judgment. As such, the explicit terms of CR 52.01 make clear that findings of fact and conclusions of law are not required. *Smith v. O'Dea*, 939 S.W.2d 353, 356 (Ky.App. 1997). The mere fact that Vestal requested such findings and conclusions does not mean the trial court was required to make them.

For the foregoing reasons, the order of the Franklin Circuit Court dismissing the petition for a declaratory judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Vestal, *pro se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Amy V. Barker
Frankfort, Kentucky