

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000947-MR

ELBERT PHILLIP LONG

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 08-CI-00657

STEVE HANEY, WARDEN;
SERGEANT WILLIAM HARRIS; AND
LIEUTENANT MONTE LUTTRELL

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, TAYLOR, AND WINE, JUDGES.

TAYLOR, JUDGE: Elbert Phillip Long brings this *pro se* appeal from a February 20, 2009, Order of the Boyle Circuit Court dismissing his petition for declaration of rights. We affirm.

Long is an inmate at Northpoint Training Center. On June 21, 2008, Long was involved in a physical altercation with another inmate. Pending an

investigation, Long was placed in segregation and was initially charged with physical action or force against another inmate where no injury had occurred including horseplay. Eventually, the charge against Long was dismissed.

Long filed a petition for declaration of rights under Kentucky Revised Statutes (KRS) 418.040 against the Warden of Northpoint Training Center, Steve Haney, and against employees of the center, Sergeant William Harris and Lieutenant Monte Luttrell. Therein, Long claimed that he was wrongfully placed in segregation pending an investigation and, as a result, was unable to receive a previously placed “food order.” By order entered February 20, 2009, the circuit court dismissed his petition for declaration of rights, thus precipitating this appeal.

Long contends that the circuit court erroneously dismissed his petition for declaration of rights. In particular, Long brings the following seven contentions of error:

Argument I.

The trial court improperly dismissed this action without consideration of the “property interest” involved, and the fraudulent misrepresentation of material facts by the appellees.

Argument II.

The appellant was denied due process under correctional policy and procedures C.P.P. 15.2, and C.P.P. 15.6, when he was held in pre-hearing detention after the appellees’ became fully and fairly notified that the appellant had been assaulted by another general population inmate.

Argument III.

The appellant was denied his Fifth, Sixth, and Fourteenth Amendment rights to the United States Constitution, when personal property belonging to the appellant was given to another general population inmate without just and proper compensation to the appellant after he was unlawfully and improperly held in pre-hearing detention.

Argument IV.

The appellant's personal money was improperly removed from his inmate account after the institution became fully aware that the appellant had been placed in segregation and would not receive his food order, but that the food order would be unlawfully given to other general population inmates.

Argument V.

The appellees' have violated the appellant's due process rights in attempting to charge the appellant twice for medical bills associated with the assault in violation of an adjustment decision.

Argument VI.

The appellees' have taken retaliatory actions against the appellant for the filing of this action by the withholding of the appellant's state pay, and denying the appellant the right to pay court ordered filing fees in this action, after the original filing of this action.

Argument VII.

The appellees have abused their authority in this action by attempting to impede and deny the appellant access to the courts in regards to the issues presented in this action.

We have reviewed the circuit court's February 20, 2009, order dismissing Long's petition for declaration of rights and discern no error therewith. In fact, the circuit court's recitation of the relevant issues and review of applicable law represents an excellent and erudite legal analysis. We, thus, cite to and adopt the circuit court's reasoning herein:

The due process rights afforded in incarcerated, convicted felon are less than those that must be provided to a free citizen. *Wolf v. McDonnell*, 418 U.S. 539 (1974). In that case, the Supreme Court held that in the context of prison disciplinary hearings, procedural due process requires "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 defense; and 3) a written statement by the fact-finder of the evidence relied upon and the reasons for the disciplinary actions." In the instant case, all the above requirements were met. Further, the prison disciplinary committee is not required to make available to the inmate confidential information received during the course of their investigation. Case law has clearly recognized the legitimate use of confidential information and limited access to the identity of confidential informants in prison disciplinary actions. *See, e.g., Stanford v. Parker*, 949 S.W.2d 616 (Ky. App. 1996); *Gilhaus v. Wilson*, 734 S.W.2d 808 (Ky. App. 1987); *Gaston v. Coughlin*, 249 F.3d 156 (2nd Cir. 2001).

The petitioner argues that he was wrongfully held in segregation pending the investigation of the incident. This Court would point out that it is well established that a prisoner has no inherent right to a particular security classification or to be housed in a particular institution. *Beard v. Livesay*, 798 F.2d 874 (1986). In fact, so long as the conditions or the degree of confinement to which the prisoner is subjected do not exceed the sentence

which was imposed and are not otherwise a violation of the Constitution, the due process clause of the Fourteen[th] Amendment does not subject an inmate's treatment by prison authorities to judicial oversight. *Hewitt v. Helms*, 459 U.S. 460 (1983), *Mahoney v. Carter*, 938 S.W.2d 575 (Ky. 1997).

As to petitioner's assertion that his food orders were misdirected during his period of segregation, the court in *Marksberry v. Chandler*, 126 S.W.3d 747 (Ky. App. 2003) addresses what it refers to as "collateral consequences due to administrative segregation[.]" In that case, the prisoner complained that he had been unable to complete a college class he was enrolled in and had not been able to retain his previous cell. The court in *Marksberry* held that "[t]hese collateral consequences affect privileges accorded to inmates that do not implicate a protected liberty interest." As such, the issue regarding the misdirection of food orders must be dismissed.

In sum, we agree with the circuit court that Long was not denied any due process rights or otherwise deprived of a cognizable liberty or property interest. As such, the circuit court properly dismissed Long's petition for declaration of rights.

For the foregoing reasons, the Order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

J. Todd Henning
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