

RENDERED: APRIL 5, 2019; 10:00 A.M.  
TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000459-MR

JANET CONOVER, WARDEN OF THE  
KENTUCKY CORRECTIONAL INSTITUTION  
FOR WOMEN; AND RODNEY BALLARD,  
IN HIS OFFICIAL CAPACITY AS  
COMMISSIONER OF THE KENTUCKY  
DEPARTMENT OF CORRECTIONS

APPELLANTS

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE CHARLES R. HICKMAN, JUDGE  
ACTION NO. 17-CI-00249

JUNE BLOCKER

APPELLEE

OPINION  
REVERSING

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BEFORE: JONES, NICKELL, AND TAYLOR, JUDGES.

JONES, JUDGE: Janet Conover, Warden of the Kentucky Correctional Institution for Women, and Rodney Ballard, Commissioner of the Kentucky Department of Corrections, appeal an order of the Shelby Circuit Court granting inmate June

Blocker's petition for a declaration of rights. For the reasons set forth below, we reverse.

## **I. BACKGROUND**

June Blocker is a Kentucky state inmate. At all relevant times, she has been housed at the Kentucky Correctional Institution for Women ("KCIW"). On November 7, 2016, Blocker was written up for three incidents that occurred on November 3, 2016. First, Blocker grabbed a security camera with her hands and pulled it from the wall, which resulted in Blocker being charged with destroying or tampering with safety/security locking devices. Later that day, Blocker hit and injured KCIW employee, Lisa Lewis, which resulted in Blocker being charged with physical action resulting in death or injury of an employee. When Lt. Marc Blanford arrived to help Ms. Lewis, he ordered Blocker to the ground, but Blocker did not comply and swung her arms at him. This resulted in Blocker being charged with physical action against an employee or non-inmate.

On November 15, 2016, the Adjustment Committee conducted a hearing on each of the offenses charged. The Adjustment Committee was presented with descriptions of the incidents from prison employees, Lisa Lewis, Lt. Marc Blanford, and Jeff Hall; the reports of investigating officers, Sgt. Collett and Sgt. Dryden; statements from Blocker to the investigating officers that she was delusional but committed the acts as charged; video footage of the assault of Ms.

Lewis and the security camera incident; and Blocker's medication records. The Adjustment Committee found Blocker guilty of all three offenses based on evidence that she committed the acts in question.

Blocker submitted a warden's appeal, and the warden affirmed the Adjustment Committee. Blocker petitioned for a rehearing, which was conducted on December 9, 2016. An additional statement from the Department of Correction's Mental Health Department ("Mental Health") introduced during the rehearing provided "that inmate Blocker is able to be held accountable for her actions." All other evidence remained the same, and Blocker was again found guilty of all three offenses. In total, the record indicates that Blocker was sentenced to serve thirty days in disciplinary segregation and a loss of seven hundred and thirty (730) days of good-time credit following the rehearing.<sup>1</sup> Blocker again appealed to the warden, but her appeal was denied.

On May 11, 2017, Blocker filed a petition for declaration of rights pursuant to KRS<sup>2</sup> 418.040 with the Shelby Circuit Court. In her petition, Blocker

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<sup>1</sup>Specifically, after the rehearing, Blocker was issued fifteen days in segregation and a loss of ninety (90) days good-time credit for destroying or tampering with safety/security locking devices; a loss of seven hundred and thirty (730) days good-time credit and thirty days disciplinary segregation for physical action resulting in death or injury of an employee; and thirty days disciplinary segregation and a loss of seven hundred and thirty (730) days good-time credit for physical action against an employee or non-inmate. These sentences were to be served concurrently.

<sup>2</sup> Kentucky Revised Statutes.

admitted that she committed the offenses, but asserted that the Adjustment Committee violated her due process rights when it failed to take into account her mental state at the time she committed the acts. She maintained that the Adjustment Committee failed to consider that she was in the midst of a psychotic episode brought on by the prison's failure to administer her bipolar prescription medication, Zyprexa, in the days leading up to and on the day of the incidents. On August 7, 2017, KCIW moved to dismiss Blocker's petition. KCIW argued Blocker received all due process rights required in the context of prison disciplinary proceedings. KCIW also argued there was "some evidence" to support Adjustment Commitment's determinations, and a statement from Mental Health provided Blocker could be held accountable for the charged behavior.

On February 26, 2018, the trial court denied KCIW's motion to dismiss and granted Blocker's petition. In that order, the trial court concluded Blocker was not afforded the minimum due process rights required in prison disciplinary proceedings because the Adjustment Committee's findings of fact did not adequately address the issue of criminal responsibility and accountability. The trial court reasoned that the Adjustment Committee made an "implied finding of accountability" that was not supported by some evidence. Based on its conclusion, the trial court ordered all Blocker's good-time credit restored and rescinded all disciplinary segregation time. This appeal followed.

## II. STANDARD OF REVIEW

“[P]rison disciplinary proceedings are not criminal prosecutions; and punishment is imposed as warranted by the severity of the offense in order to correct and control inmate behavior within the prison.” *Conover v. Lawless*, 540 S.W.3d 766, 768 (Ky. 2017) (quoting *Ramirez v. Nietzel*, 424 S.W.3d 911, 916 (Ky. 2014)). Prison administrators are better suited than the courts to make that determination. Accordingly, the standard of review in prison disciplinary proceedings is highly deferential to prison administrators. *Smith v. O’Dea*, 939 S.W.2d 353, 357 (Ky. App. 1997). “The court seeks not to form its own judgment, but, with due deference, to ensure that the agency’s judgment comports with the legal restrictions applicable to it.” *Id.* at 355; *Foley v. Haney*, 345 S.W.3d 861, 863 (Ky. App. 2011). When there is some evidence to support the prison administrators’ decision, we will not interfere with the disciplinary proceedings. *Superintendent, Mass. Correctional Institution, Wapole v. Hill*, 472 U.S. 445, 457, 105 S.Ct. 2768, 2775, 86 L.Ed.2d 356 (1985).

## III. ANALYSIS

First, we will examine whether the Adjustment Committee afforded Blocker her procedural due process rights. Due process under the federal and Kentucky constitutions is implicated in prison disciplinary proceedings when, as in this case, the prisoner’s good-time credit is at stake. *O’Dea*, 939 S.W.2d at 357.

In the context of prison disciplinary proceedings, however, the prison is only required to afford the prisoner “minimal due process”; it does not have to afford the full panoply of rights due in a formal criminal prosecution by the State. *See Ramirez*, 424 S.W.3d at 916 (citing *Wolff v. McDonnell*, 418 U.S. 539, 555-57, 94 S.Ct. 2963, 2974-75, 41 L.Ed.2d 935 (1974)). To satisfy the minimal due process requirement, the prison must provide: “(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 [the inmate’s] defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.” *Hill*, 472 U.S. at 454, 472 S.Ct. at 2773 (1985) (citing *Wolff*, 418 U.S. 563-67, 94 S.Ct. at 2978-80). Additionally, an inmate has a limited right to present exculpatory evidence. *Ramirez*, 424 S.W.3d at 919.

Here, Blocker signed a document stating that she received on November 8, 2016, a copy of the Disciplinary Report Form Part I – Write-up and Investigation for each of the three offenses. By signing that document, Blocker also acknowledged she was advised of her right to call witnesses and have an inmate legal aid or a staff representative present at her hearing. Blocker received a copy of the Disciplinary Report Form Part II – Hearing/Appeal for each of the three offenses, which states the evidence relied upon and the reasons for the

disciplinary action. Blocker acknowledged her receipt of the report by signature on November 15, 2016, following the first hearing and on December 9, 2016, following the rehearing. Thus, we conclude that the Adjustment Committee complied with all three of the due process requirements set forth in *Hill*.

In this instance, there is evidence in the record that supports the Adjustment Committee's decisions. There is no dispute Blocker committed the acts in question. Lisa Lewis and Lt. Marc Blanford were both assaulted by Blocker, and they each wrote descriptions of the assaults in their respective disciplinary reports. Blocker was captured on video pulling the security camera from the wall. Thus, there is "some evidence" Blocker committed the offenses for which she was ultimately penalized.

Indeed, Blocker does not deny committing the offenses. Rather, she claims that the Adjustment Committee failed to adequately consider exculpatory/mitigating evidence bearing on her criminal responsibility and accountability. According to Blocker, prison officials did not administer her antipsychotic medication to her in the days leading up to and on the day Blocker committed the infractions. Blocker argues that the lapse in her medication regimen caused her to be unaware of her actions when she committed the disciplinary infractions at issue. However, Blocker's medication records indicate she was given the prescribed doses of Zyprexa on the days leading up to and the day of the

incidents. Adjustment Officer Lt. Sams, stated in the findings section of his disciplinary report that Blocker was on the medications she was prescribed, and Mental Health provided a statement to the Adjustment Committee that Blocker was able to be held accountable for her actions. The Adjustment Committee considered the statement from Mental Health during the rehearing.

The trial court determined the statement by Mental Health was unsupported by any evidence in the record, finding Blocker was bipolar, off her medication, hearing voices, and delusional when the offenses occurred. Thus, the trial court found that the “implied finding by the Adjustment Officer was arbitrary and not supported by ‘some evidence.’” The trial court ultimately concluded that Blocker was entitled to a declaratory judgment in her favor because the adjustment committee did not make “any specific finding regarding Blocker’s responsibility for her actions, or that the Adjustment Officer was relying on information obtained from ‘Mental Health’ and had made a finding from the information obtained from ‘Mental Health.’”

The real question presented by this appeal is whether a prisoner faced with a disciplinary charge has a due process right to present evidence that she lacked the intent to commit the infraction at issue because of mental illness. While we appreciate the reasoning expressed by the dissent, we cannot agree that a lack

of intent due to mental illness is a defense in the context of a prison disciplinary proceeding.

In support of her argument, Blocker cites KRS 504.020(1). This statute governs capacity as related to “criminal conduct.” However, it is vitally important to recognize that Blocker was *not* charged with criminal conduct by the Commonwealth. Had the Commonwealth done so, Blocker would have been entitled to a whole panoply of rights that far exceed the limited rights afforded to prisoners in prison disciplinary proceedings—counsel, trial by jury, reciprocal discovery, and depending on the context, the right to argue lack of capacity. The fact is, however, that Blocker was not charged with a violation of the penal code and is not entitled to the full set of rights available to defendants faced with criminal charges. Blocker was charged with violating prison regulations. She was brought before the Adjustment Committee as part of a prison disciplinary matter. The United States Supreme Court has held time and time again that prison disciplinary proceedings are not criminal proceedings.

To this end, there are no statutes or regulations that make lack of capacity a defense in a prison disciplinary proceeding. CPP<sup>3</sup> 13.13 requires only that “a representative of the warden and a representative of the Mental Health Authority shall consult . . . prior to the imposition of disciplinary action for an

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<sup>3</sup> Kentucky Department of Corrections Policies and Procedures.

inmate who meets the criteria for serious mental illness.” CPP 13.13(II)(D)(4)

We do not interpret this regulation as requiring consultation with Mental Health before guilt is determined. Rather, the logical reading of the regulation is that before imposing a penalty such as segregation, the disciplinary body should consult with Mental Health to determine whether the punishment is appropriate in light of the mental illness. This allows the mental health personnel to weigh in on the punishment and give guidance in the event they believe a punishment—like segregation—could exacerbate the inmate’s mental issues. Interpreting this regulation to create a defense as part of a prison disciplinary proceeding is out of line with the streamlined nature of prison adjustment proceedings.

Such proceedings are designed to be truncated. Injecting the issue of mental culpability into prison disciplinary proceedings would be unwise. Take this case, for example. Even assuming what Blocker alleges is true, that she missed one or more doses of medication, it would not automatically make her incapable of appreciating the nature of her actions. Some form of expert testimony would be necessary on the nature of the medication vis-à-vis the nature of the mental illness at issue. Generally, in a criminal proceeding where mental culpability is at stake there are psychological assessments, experts in the field, and the like. Interjecting such matters into disciplinary proceedings will increase the costs and time associated with them and far exceed their limited scope and purpose.

While we are unable to locate any published authority directly on point, we believe it is both significant and persuasive that several courts have held that prisoners do not have a constitutional right to raise similar culpability related defenses, such as self-defense, in prison disciplinary proceedings. *See Rowe v. DeBruyn*, 17 F.3d 1047, 1052-53 (7th Cir. 1994).

Moreover, CPP 13.13(II)(D)(4), does not require any specific findings on the part of the Adjustment Officer or Mental Health of any inmates' accountability for their actions. It merely requires that Mental Health "consult" with a representative of the warden prior to disciplinary action. "Consult" is not defined in the policy, but the definition of "consult" is "to ask the advice or opinion of."<sup>4</sup> As part of the rehearing, a mental health representative provided a statement to the Adjustment Committee.

Blocker argues in her brief that the statement from Mental Health is unreliable because the identity of the Mental Health employee who provided the statement is unknown, his/her qualifications are unknown, and there is no indication of how the determination was made. Blocker cites *Haney v. Thomas*, 406 S.W.3d 823 (Ky. 2013), in support of this argument. In *Haney*, the Adjustment Committee found an inmate guilty of hitting another inmate in the eye

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<sup>4</sup> *Consult*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/consult> (last visited March 29, 2019).

based on information received from at least two inmates who were confidential informants. *Id.* at 824. The Supreme Court of Kentucky concluded that when tips from confidential informants form the basis of *guilt* in a prison disciplinary proceeding, the Adjustment Committee must determine whether the information is reliable. *Id.* The difference here is that the Mental Health employee who provided the statement was not providing a statement that the Adjustment Committee used to determine whether Blocker was guilty of committing the offense. Guilt was established by the litany of other evidence, including Blocker's own admission. The statement was used to demonstrate compliance with CPP 13.13(II)(D)(4), *i.e.*, that the Adjustment Committee consulted with Mental Health prior to the imposition of a punishment.

In conclusion, we hold that the circuit court abused its discretion when it weighed and reevaluated the evidence. It is clear from the administrative record that the Adjustment Committee consulted with Mental Health and that the disciplinary action was based on some evidence indicative of Blocker's guilt.

### **III. CONCLUSION**

For these reasons, we reverse the order of the Shelby Circuit Court.

TAYLOR, JUDGE, CONCURS.

NICKELL, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

NICKELL, JUDGE, DISSENTING: Respectfully, I dissent. I would affirm the trial court's order finding Blocker was not afforded minimum due process rights because there is no reliable evidence in the record establishing she possessed the requisite mental state to be held criminally responsible for her actions.

There is no question Blocker committed the three serious prison infractions. On appeal, we must address two issues. First, we must determine whether *mens rea*<sup>5</sup>—generally required for criminal responsibility—pertains to prison infractions and discipline. Second, we must determine whether the trial court erred in finding no reliable evidence to establish Blocker was capable of acting with the requisite “guilty mind” if unmedicated by the prison.

Regarding the first issue, criminal responsibility generally requires awareness, conscious will, volition, and rational decision-making.

The fact that the statute does not specify any required mental state, however, does not mean that none exists. We have repeatedly held that “mere omission from a

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<sup>5</sup> The term, “*mens rea*,” is Latin, meaning “guilty mind,” and is defined as “[t]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness.” BLACK’S LAW DICTIONARY (10th ed. 2014).

criminal enactment of any mention of criminal intent”  
should not be read “as dispensing with it.”

*Elonis v. United States*, 575 U.S. \_\_\_, 135 S.Ct. 2001, 2009, 192 L.Ed.2d 1 (2015)  
(citations omitted). The same legal reasoning applied to criminal statutes logically  
demands a requisite mental state relative to prison regulatory and disciplinary  
matters.

Here—though prison regulations are silent regarding any requisite  
mental state—the required consultation between a representative of the Warden  
and the Mental Health Authority, together with reference by the Adjustment  
Officer (AO) to the Mental Health statement addressing accountability, supports  
the conclusion consultation was required to determine Blocker’s mental state  
because *mens rea* is required to establish guilt in prison disciplinary matters.  
Requiring an accountable mental state relative to prison disciplinary matters is  
consistent with well-settled law holding a person should not be held responsible for  
criminal conduct if at the time of such conduct, as a result of mental illness or  
intellectual disability, she lacks substantial capacity to appreciate the criminality of  
her conduct or to conform her conduct to the requirements of law. KRS 504.020.

Commensurate with the seriousness of her offenses, Blocker  
reasonably received harsh punishment, including imposition of significant  
disciplinary segregation and extensive loss of non-restorable good time credit.  
However, under criminal statutes, the potential for a harsh penalty, itself, supports

requiring an accountable mental state. The United States Supreme Court has held a potential severe penalty attached to a criminal statutory violation “is a further factor tending to suggest that Congress did not intend to eliminate a *mens rea* requirement.” *Staples v. United States*, 511 U.S. 600, 618, 114 S.Ct. 1793, 1804, 128 L.Ed.2d 608 (1994). Likewise, a potential harsh punishment offers further support for requiring an accountable mental state prior to attaching responsibility for wrongful behavior in prison regulatory and disciplinary matters.

Regarding the second issue, the trial court was rightfully troubled by the AO’s “finding” of mental responsibility relative to each infraction which merely recited, “A statement was read from Mental Health that inmate Blocker is able to be held accountable for her actions.” The actual Mental Health statement was not made part of the record, and the trial court explained the AO’s bald recitation of its unattributed, unqualified, and unexplained conclusion was problematic because:

[t]he Court is unaware of what information was contained in the statement from “Mental Health” or indeed who was the author of the statement from “Mental Health.” The Court is unaware of what information was relied upon for “Mental Health” to reach the conclusion that Blocker was criminally responsible for her actions. The [AO] did not indicate that they made any determination regarding whether Blocker should be held criminally responsible, the [AO] simply set forth the fact that Mental Health had found that Blocker was able to be held accountable for her actions.

Further, the “findings” recorded by both the AO and warden fail to cite Blocker’s Medication Administration Record (MAR) to refute or establish her defense asserting she was “not in her present mind” when committing the offenses due to the prison’s failure to administer prescribed psychotic medication for her diagnosed bipolar condition. Notably, however, it was Blocker who attached a copy of the MAR to her written statement appealing the AO’s decision to the warden.

By finding Blocker guilty and imposing sentence, the trial court reasoned the AO must have impliedly found Blocker possessed the requisite mental state to be held responsible for her actions based on the Mental Health statement. However, the trial court determined this implied finding of accountability was not supported by “some evidence,” thereby making the resulting finding of guilt arbitrary. The trial court concluded

[b]ased on the foregoing, the Court finds that DOC did not afford Blocker the minimum due process rights afforded to her in prison disciplinary proceedings, as the findings did not adequately address the issues of criminal responsibility/accountability[.]

I agree with the trial court and would affirm its analysis and holding.

I cannot fault the trial court for reaching a reasoned determination based on the record as presented. In an analogous prison disciplinary case addressing reliability

of drug testing, *Webb v. Sharp*, 223 S.W.3d 113, 119 (Ky. 2007), the Supreme Court of Kentucky held,

[b]efore we can consider the question of whether the field tests used in this case would satisfy the “some evidence” standard, a threshold question as to reliability must be answered. For “[a]lthough a prison inmate facing administrative disciplinary proceedings does not have the same procedural safeguards as does a person facing criminal prosecution or even parole revocation, fundamental fairness dictates that the evidence relied upon to punish him at least be reliable.”

(Citations omitted.)

Here, the AO relied on the reading of a “Mental Health” statement expressing “Blocker is able to be held accountable for her actions.” However, the Mental Health statement was unattributed; its author unidentified and any professional qualifications unstated. Because criminal accountability is a mental health issue, CPP 13.13 requires its determination by “qualified mental health or medical personnel.” However, without the Mental Health statement in the record, it was impossible for the trial court to discern whether the medical opinion came from a qualified physician, psychologist, or nurse, or from an unqualified social worker, secretary, clerk, receptionist, or prison aide. Further, the conclusory statement provided no explanation of how Blocker could reasonably be deemed mentally accountable absent administration of her prescribed antipsychotic medication and in her delusional state. Without some attribution, qualification,

and explanation, the Mental Health statement remained inherently unreliable and could not provide “some evidence” of Blocker’s accountability for her actions.

After thoroughly reviewing the record before it, the trial court ultimately concluded,

[a]ll evidence set out in the findings described Blocker as bipolar, having been denied her medication, was hearing voices, and was delusional when the offenses occurred. There was no evidence contained in the findings to support a conclusion that Blocker could be held accountable for her actions. Again, the Court has no knowledge of the contents of the statement from “Mental Health”, and it is possible that the Adjustment Officer reviewed or considered evidence that was never mentioned in the findings which would support such a conclusion. With the record before the court, it concludes that the findings of the Adjustment Officer were inadequate, and the finding of guilt and the implied finding that Blocker could be held accountable for her actions was arbitrary and unsupported by “some evidence.”

I agree. If the prison deemed it medically necessary to regularly administer prescribed antipsychotic medication to address Blocker’s diagnosed mental condition and control her behavior, yet knowingly failed to provide such medication to her on the day in question, thereby causing her to become delusional and misbehave, it is fundamentally unfair to hold her accountable for conduct beyond her control.

For the foregoing reasons, I would affirm.

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