

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Quinton L. Peterson,
Petitioner Below, Petitioner**

FILED
November 30, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0552 (Fayette County 11-C-11)

**David Ballard, Warden, Mt. Olive
Correctional Complex, Respondent Below,
Respondent**

MEMORANDUM DECISION

Petitioner Quinton L. Peterson, *pro se*, appeals the March 1, 2011 order of the Circuit Court of Fayette County denying his petition for a writ of habeas corpus concerning his disciplinary conviction and placement in segregation for an assault on another inmate causing serious injury. The respondent warden, by Charles Houdyschell Jr., his attorney, filed a summary response to which petitioner filed a reply.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner, an inmate at Mt. Olive Correctional Complex, filed a petition for a writ of habeas corpus with the following five grounds:

1.) "State failed to adhere to its own policy requiring issuance of a violation report within 72 hours of an inmate being placed in detention."

2.) "I was found guilty by the hearing officer and disciplined based upon information from an eyewitness and confidential informants proven not reliable or credible."

3.) ["I was denied Equal Protection under the 14th Amendment because I was intentionally treated differently and discriminated against because of my race."

4.) “I was denied eyewitness accounts of incident & I was issued a corrected hearing report without my approval 3 weeks after my hearing in violation of my right to Due Process.”

5.) “I was denied Equal Protection & Due Process of the 14th & 8th Amendments of the United States Constitution in this and all of the above grounds when I was transferred from general population, placed on Detention Status in segregation, tried & convicted upon unreliable confidential information & an eyewitness, testimony from staff not presented or recorded during my hearing, and placed in Administrative Segregation for the next 18 months or more.”

Petitioner had been convicted in a prison disciplinary proceeding of an assault on another inmate causing serious injury. Petitioner was disciplined with sixty days of punitive segregation and sixty days of loss of privileges from September 7, 2010, to November 6, 2010.¹ (Another inmate, Stephen Hatfield, was convicted in disciplinary proceedings of enticing petitioner to undertake the assault.)

Around the same time of the assault, petitioner was also charged with the separate, unrelated disciplinary violation of entering into a contract, i.e., obtaining a Facebook account, without prison approval. In its order denying petitioner’s habeas petition concerning his disciplinary conviction for assault, the circuit court appeared to have been under the misapprehension that the unauthorized contract charge was related to the assault charge.

The circuit court’s order indicates that petitioner properly exhausted his administrative remedies. As to the merits of Mr. Peterson’s petition, the circuit court ruled as follows

CONCLUSIONS OF LAW

* * *

4. Penal institution administrative disciplinary rules, regulations, procedures and the administration and enforcement thereof clearly do not rise to the same level of rights, proof, procedural due process and substantive due process as do criminal justice proceedings in judicial settings wherein innocence, guilt, or sentencing are determined.

In consideration of all of the aforementioned, the Court concludes that the Petitioner was denied neither procedural nor

¹ It appears that after the term of punitive segregation ended, petitioner was placed in the Quality of Life Program rather than being returned to the general population.

substantive due process of law during the course of his disciplinary proceedings.

Accordingly, it is **ORDERED** that the relief requested is hereby **DENIED** and said civil action is **DISMISSED** (*Id.*, pp. 4-5).

On appeal, petitioner makes various arguments under the following two assignments of error: (1) The circuit court abused its discretion when the court did not give petitioner's petition for a writ of habeas corpus meaningful review, thereby denying him meaningful access to the courts, due process, and equal protection under the law in violation of the United States and West Virginia Constitutions; and (2) the circuit court abused its discretion when the court did not reach a decision on petitioner's claim that he has been subjected to cruel and unusual punishment and has been the victim of intentional, disparate treatment on the basis of his race.² The respondent warden notes that prison discipline is authorized by statute. *See* W.Va. Code § 28-5-27(f) (contemplating loss of good time credit as a sanction). The respondent warden argues that neither substantive nor procedural due process of law is implicated in this case. The respondent warden notes that the need for discipline and order in prisons is obvious. The respondent warden asserts that the fact that an inmate is placed in a more secure setting or has privileges withheld from time to time does not constitute a dramatic departure from the conditions of ordinary prison life. As to petitioner's claim that he has been the victim of racial discrimination,³ the respondent warden asserts that petitioner and Inmate Hatfield were not similarly situated: Petitioner was the attacker in the assault, while Inmate Hatfield was merely the one who enticed petitioner to attack.

The appropriate standard of review is set forth in syllabus point one of *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006):

In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a *de novo* review.

After careful consideration of the parties' arguments, this Court concludes that the circuit court did not abuse its discretion in denying petitioner's petition for a writ of habeas corpus.

² One of the arguments petitioner makes is the factual assertion that he was placed in detention without being given a copy of the violation report on the alleged assault within seventy-two hours as provided for in Division of Corrections regulations. However, from the detention reports that are part of the appendix, it was the unrelated unauthorized contract charge that caused petitioner to be placed in detention, not the assault charge. On the basis of those detention reports, petitioner received a copy of the violation report on the unauthorized contract charge within approximately seventy-two hours of being placed in detention.

³ Petitioner is African-American, and Inmate Hatfield is Caucasian.

For the foregoing reasons, we find no error in the decision of the Circuit Court of Fayette County and its March 1, 2011 order denying petitioner's petition for a writ of habeas corpus is affirmed.

Affirmed.

ISSUED: November 30, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh