

IN THE CHANCERY COURT OF LAUDERDALE COUNTY, TENNESSEE

FREDERICK BRAXTON,

PETITIONER

vs.

NO. 16298

TENNESSEE DEPARTMENT OF
CORRECTION; LISA HELTON,
AS COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF
CORRECTIONS

RESPONDENTS

FILED

JAN 02 2024
Sandra Bunham
CLERK & MASTER

ORDER

The Petitioner, Frederick Braxton, (“Petitioner”) is an inmate in the custody of the Tennessee Department of Corrections (“TDOC”); during all times relevant to this case, he was housed at West Tennessee State Penitentiary (“WTSP”) in Lauderdale County, Tennessee. Petitioner has sought judicial review of disciplinary action taken against him while incarcerated at TDOC.

Petitioner filed his Petition for Writ of Certiorari on July 19, 2022 in the Davidson County Chancery Court in Nashville, Tennessee. On July 22, 2022, the Davidson County Chancery Court transferred the matter to Lauderdale County Chancery Court, citing that Lauderdale County was the proper venue. The administrative record was filed by TDOC on December 16,

A TRUE COPY, ATTESTED
Sandra Bunham
CLERK AND MASTER

2022. Various extensions of time were granted to both parties for extensions of time ,the most recent being March 21, 2023.¹

STANDARD OF REVIEW

The Tennessee Constitution provides as follows:

The judges or justices of the Inferior Courts of Law and Equity, shall have the power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.

The common-law writ of certiorari serves as the proper procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals. *See Rhoden v. State Dep't of Corr.*, 984 S.W.2d 955, 956 (Tenn.Ct.App. 1998) (citing *Bishop v. Conley*, 894 S.W.2d 294 (Tenn.Crim.App.1994)). By granting the writ, the reviewing court orders the lower tribunal to file its record so that the court can determine whether the petitioner is entitled to relief. Review under a writ of certiorari is limited to whether the inferior board or tribunal exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently. *McCallen v. City of Memphis*, 786 S.W.2d 633, 640 (Tenn.1990). The reviewing court does not weigh the evidence, but must uphold the board's decision if the board acted within its jurisdiction, did not act illegally or arbitrarily or fraudulently, and if there is any material evidence to support the board's findings. *Watts v. Civil Serv. Bd. of Columbia*, 606 S.W.2d 274, 276-77 (Tenn.1980); *Davison v. Carr*,

¹ The Court reviewed the initial briefs of the parties as well as corresponding documents, and indicated in approximately May 2023 that a decision could be rendered based upon briefs only, and dispensed with the necessity of oral arguments. The Court's judicial assistant requested the Initial Petition from the attorney for Petitioner on August 7, 2023. As a clarification to this request, it is noted that the 25th Judicial District includes five (5) counties, and the Court in Lauderdale County was being relocated from the "old courthouse" to the Justice Complex. The petition was not provided by Petitioner's Counsel until October 17, 2023. It was at that time that the Court was able to begin its full deliberations, which were later aided by the entire physical file from the "old courthouse." The Court believed that such explanation was necessary, given the time the Original Petition was filed in Davidson County to the time this Opinion is being entered.

659 S.W.2d 361, 363 (Tenn.1983). These determinations are issues of law. Watts, 606 S.W.2d at 277.

The petition does not empower the court to inquire into the intrinsic correctness of the board's decision. Willis v. Tennessee Dept. of Correction , 113 S.W.3d 706, 712 (Tenn.2003)

In accordance with this constitutional provision, the legislature had provided that “[t]he judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause, supported by oath or affirmation. ” T.C.A. § 27-8-104(a). Further, “[t]he petition for certiorari may be sworn to before the clerk of the circuit court, the judge, any judge of the court of general sessions, or a notary public, and shall state that it is the first application for the writ.” T.C.A. § 27-8-106.

In order for a petition for a common law writ of certiorari to be valid, the petitioner must verify the contents of the petition and swear to the contents of the petition under oath, typically by utilizing a notary public. *See* TENN.CODE ANN. §§ 27-8-104(a), 106 (2000); Bowling v. Tenn. Bd. of Paroles, No. M2001-00138-COA-R3-CV, 2002 Tenn.App. LEXIS 291, at *9 (Tenn.Ct.App. Apr. 30, 2002). A verification establishes the truth of the document's contents whereas notarization acknowledges the proper execution of a document. Wilson v. Tennessee Dept. of Correction, 2006 WL 325933, *4 (Tenn.Ct.App. 2006).

Subject matter jurisdiction “can only be conferred on a court by constitutional or legislative act.” Northland Ins. Co. v. State, 33 S.W.3d 727, 729 (Tenn.2000) (citing Kane v. Kane, 547 S.W.2d 559, 560 (Tenn.1977); Computer Shoppe, Inc. v. State, 780 S.W.2d 729, 734 (Tenn.Ct.App. 1989)). The Tennessee Constitution and the statutes promulgated by the

legislature require that a petition for a writ of common law certiorari be made under oath. *See* TENN. CONST. art. 6, § 10; TENN.CODE ANN. §§ 27-8-104(a), -106 (2000). Jackson v. Tennessee Dept. of Correction, 2006 WL 1491445, *4 (Tenn.Ct.App. 2006).

ANALYSIS

1. Petitioner asks this Court to rule on his appeal of both charges that were heard on May 9, 2022. Upon thorough review of the record, this Court notes that the charge stemming from the discovery of tobacco during a search of the Petitioner was never properly appealed to the Warden, even though he was informed on two separate occasions of the errors in the paperwork (A.R. Affidavit of Nancy Tolley 2-4).

The question with which the Court is faced is whether the Petitioner exhausted his administrative remedies. “The connection between the requirement of exhaustion of administrative remedies and review by common law writ of certiorari is obvious. A party cannot bypass administrative decision makers and then seek to avoid the standard of review applicable to common law writ of certiorari because there is no record of proceedings below and no administrative or quasi judicial decision made.” B.E. Nashville, Inc. v. City of Franklin 2005 WL 127082, *7 (Tenn.Ct.App.,2005).

Although the Petitioner stated that the appeal process was “exhausted”, it is obvious to the Court that the warden never entertained plaintiff’s appeal of the tobacco charge. The appeal procedure was not followed nor was it corrected upon notice of deficiencies. Because Petitioner did not remedy his administrative appeal deficiencies when submitting the same to the Warden, he deprived the Warden of reviewing and ruling

on the Tobacco Charge. Therefore, the Court finds that plaintiff failed to exhaust his administrative remedies and therefore the petition for certiorari as to the Tobacco Charge must be dismissed.

2. The Court will now address the issue of the Petitioner's counsel being unable to assist Petitioner in pre-trial preparation. The Court has reviewed the record, briefs submitted, as well as TDOC Rules and Regulations, and can find no provision that provides for pre-trial assistance from counsel. Additionally, Petitioner does not provide specific evidence nor arguments that Petitioner *requested* his counsel be available prior to the hearing in question, only that his counsel was prohibited from attending the actual hearing itself. The Court is also provided no evidence that such pre-trial meeting requests were denied. As such, the Court does not believe that Petitioner has shown that his rights were violated based upon this argument.
3. Petitioner complains of deviation from TDOC policy that deprived him of a fair hearing and violated his right to due process, specifically the issue of Petitioner's attorney being prohibited from observing the hearing.

TDOC Policy No. 502.01(VI)(L(4)(j) provides that "Attorneys shall not be permitted in disciplinary hearing but may be permitted to be present at observers." *Id.* There is no specific case law on this particular subsection, to the Court's knowledge.

The Court first turns to Wolff v. McDonnell, et. al, 418 U.S. 539 (1974), which was relied upon by the Respondents in their brief. The Court states that the "insertion of counsel into the disciplinary process would inevitably give the proceedings a more adversary case and tend to reduce their utility as a means to further correctional goals."

Id. at 570. However, this Court notes that the Supreme Court’s analysis was within the context of allowing inmates to have their counsel *participate* in the proceedings. Indeed, the Supreme Court does not mention any provision in the Nebraska rules (where the *Wolff* case originated) that allow for attorneys to merely *observe*, as the Tennessee rules specifically contemplate. Therefore, while the Court notes that it is well established that attorneys are prohibited from participating in the proceedings, that is not the Petitioner’s argument and therefore the Wolff case is inapplicable to this matter.

The record reflects that Petitioner was charged with two infractions² on April 29, 2022, when various illegal drugs, as well as bags of tobacco, were found on Petitioner’s person when he was searched (A.R. Ex. A, p. 7). On May 5, counsel for Petitioner sent correspondence to TDOC³ confirming his plans to attend the administrative hearing. However, based upon the correspondence it appears that Petitioner’s counsel was denied access to the hearing. There is no evidence in the record giving a reason to this denial. As a result, Petitioner’s hearing was held on May 9, 2022, at which time he was found guilty of both offenses (A.R. Ex. A and B).

The Court believes that this arbitrary decision cannot be overlooked. If, as was done here, the decision to allow counsel to observe rested solely on the administrative body, it stands to reason that counsel would often be denied access for good reasons, bad reasons or no reasons at all (as was done here). Because the Disciplinary procedures contemplate their attendance as observers, this Court believes that the intent of the Rule is to allow access to the proceedings while prohibiting advocacy at the trial stage. The

² For the purposes of this order, the individual charges will be referred to as “the drug charge” and “the tobacco charge” when it is appropriate to discuss them individually.

³ Specifically, Petitioner’s counsel communicated with Lucy Diane Henson, assistant to the Warden.

Court can only assume that the attorneys being able to watch the hearings is, in some ways, integral to their ability to advocate later, during future appeals. As such, this Court must vacate the Petitioner's disciplinary charges as related to Incident No. 01531010 (the Drug Charge).

4. Petitioner next complains that he was unable to present evidence and call witnesses. The Court, in reviewing the record, finds that Petitioner provided affidavits of two (2) other prisoners who admitted that the contraband found was theirs, not Petitioners. There are disagreements as to whether the inmates would have actually testified on Petitioner's behalf; however, the Court is unconcerned with whether or not the witnesses would have been available, cooperative, or helpful to one party or another. The Court is specifically concerned whether, as a result of the witnesses being unable to testify, the Petitioner's rights were violated.

The Court finds that, in this instance, those rights were not violated. Petitioner is bound to follow the Uniform Disciplinary Procedures, just as much as Respondents are bound to do so. For this Court to allow Petitioner to ignore the rules, but take Respondents to task for their violations, would be arbitrary in itself. The Court declines to do this as the Uniform Disciplinary Procedures, specifically section 502.01(II), states that they were created to "provide for the fair and impartial determination and resolution of all disciplinary charges placed against inmates committed to the Tennessee Department of Correction." *Id.* These procedures "balance a prisoner's interest in presenting witnesses in his defense and the institution's interest in maintaining discipline and order." Horton v. Tenn. Dep't of Corr., 2002 WL 31126656 at *5 (Tenn. Ct. App. Sept. 26,

2002).

If Petitioner had followed these Procedures correctly, he would have properly submitted form CR3511 in order to put the Respondents on notice of those witnesses he intended to call; he did not comply with this rule. The Court has reviewed Rogers v. Payne, 2010 WL 4272745 (Tenn. Ct. App. Oct. 28, 2010), and agrees with that Court's analysis. In this case, Petitioner only relies on his assertion that, because he submitted the affidavits, he complied with the Procedures; this is inaccurate. The record simply does not support a finding that Petitioner properly requested, through form CR3511, the opportunity to call witnesses on his behalf. The Uniform Procedures afforded Petitioner a process by which he could have filed his written requests, and his decision to not follow the procedures does not lend to a finding that the Respondents acted improperly for denying his requests, during the hearing, to call witnesses on his behalf.

CONCLUSIONS OF LAW

The Uniform Disciplinary Procedures provide the principal means of ensuring that disciplinary proceedings are fair, reliable, and impartial. The integrity of disciplinary systems is important to the stability of a corrections program. Willis v. Tenn. Dept. of Correction, 113 S.W.3d 706, 714 (2003).

The Tennessee Supreme Court has indicated that relief under a writ of certiorari may be authorized to remedy: "(1) fundamentally illegal rulings; (2) proceedings inconsistent with essential legal requirements; (3) proceedings that effectively deny a party his or her day in court;

(4) decisions beyond the lower tribunal's authority; and (5) plain and palpable abuses of discretion.” Bonner v. Cagle, 2016 WL 97648 (Tenn. App. 2016).

Thus, an inmate may be entitled to relief under a common law writ of certiorari if he demonstrates that the disciplinary board failed to adhere to the Uniform Disciplinary Procedures and that its failure to do so resulted in substantial prejudice to the inmate. Irwin v. Tenn. Dep't of Corr., 244 S.W.3d 832, 835 (Tenn.Ct.App.2007).


The record reflects a blatant and intentional deviation from the Uniform Disciplinary Procedures on the part of Respondent in this matter as it relates to Incident No. 01531010 (the Drug Charge). While a minor deviation from procedures that does not prejudice the prisoner does not require a dismissal of the disciplinary offense, this Court is concerned by the fact that the Petitioner’s attorney requested, repeatedly and quickly, to attend the proceedings and was denied, repeatedly and quickly, with no explanation that could have been considered by the Court. Had the Disciplinary Procedures not *specifically* contemplated this situation, and had not written included a provision to ensure the prisoner’s attorney’s attendance at such hearings, the Court’s view may be different. However, as the Rules and Disciplinary Regulations are currently read, this arbitrary decision reflects adversely on the appearance of the integrity of the disciplinary system in this particular case. Because of these deviations from proper procedure, this Court is compelled to find that the proceedings were inconsistent with essential legal requirements, that Petitioner was effectively denied his day in court as a result, and that such decision was a plain and palpable abuse of discretion.

Accordingly, it is ordered, adjudged and decreed that the finding of guilt against Petitioner, Frederick Braxton, in Incident No. 01531010 (the Drug Charge) is vacated and the

imposition of sanctions is set aside, in order for said charge to be retried at a hearing in which Petitioner's counsel may be a present observer.

It is further ordered, adjudged and decreed that the Petition for Writ of Certiorari as it relates to Incident No. 01531011 (the Tobacco Charge) is dismissed, as Petitioner did not exhaust his administrative remedies before seeking relief from this Court.

Costs are assessed against Respondents for which execution shall issue, if necessary.



CHANCELLOR KASEY A. CULBREATH
Date: Dec. 29, 2023

Certificate of Service

I hereby certify that I have mailed, postage prepaid, or hand delivered a copy of the attached Order to the last known address of the attorney (s) of record in the cause.

This the 2nd day of January 2024.

Sandra Burnham
Clerk & Master 