

IN THE COURT OF APPEALS OF IOWA

No. 0-372 / 89-1183

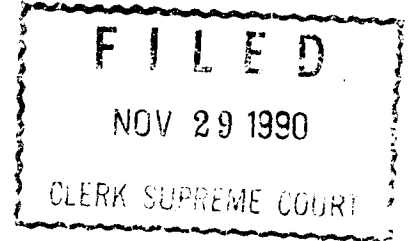
PHILLIP WHEELER,

Appellant,

vs.

STATE OF IOWA,

Appellee.



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Appeal from the Iowa District Court for Henry County,
Harlan W. Bainter, Judge.

Wheeler appeals the district court's denial of his
application requesting postconviction relief. **AFFIRMED.**

Linda Del Gallo, Acting State Appellate Defender, and
Patricia R. Lapointe, Assistant State Appellate Defender,
for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen,
Deputy Attorney General, and Kristin W. Ensign, Assistant
Attorney General, for appellee.

Considered by Oxberger, C.J., and Donielson and
Sackett, JJ.

OXBERGER, C.J.

Prison inmate Phillip Wheeler was accused of attempting to escape from, and damaging property of, the medium security correctional facility in Mount Pleasant. The prison disciplinary committee found Wheeler guilty of violating six prison rules and imposed disciplinary measures.

Wheeler sought postconviction relief challenging the disciplinary action. The district court denied Wheeler's application requesting postconviction relief. Wheeler appealed.

Wheeler challenges the sufficiency of the evidence establishing he violated any prison rules. Wheeler also contends the disciplinary committee impermissibly denied his right to call witnesses on his behalf during the committee's hearing. Additionally, Wheeler contends the disciplinary committee erred by not allowing him to review certain nonconfidential evidence. Finally, Wheeler contends the disciplinary action should be invalidated because the prison's security director both investigated the violation and signed the disciplinary notice as the "reporting staff person." Wheeler asserts the security director's dual role (1) denied Wheeler's due process right to an impartial investigator and an impartial disciplinary committee, and (2) violated a prison rule providing investigations be done by a staff person not involved in

the reported violation as either a witness or a "reporting staff person." The State denies the security director investigated the incident.

Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards we make our own evaluation based on the totality of the circumstances which is the equivalent of de novo review. Id.

INSUFFICIENCY OF EVIDENCE. In Wilson v. Farrier, 372 N.W.2d 499, 501 (Iowa 1985) the supreme court held:

[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced...." Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

After examining the information before the disciplinary committee, we find adequate evidence existed to support the committee's decision. We affirm the district court's finding that some evidence supported the disciplinary committee's findings that Wheeler violated various prison rules.

CALLING OF WITNESSES. The trial court found no merit in Wheeler's contention he was denied the right to present his witness' testimony to the committee. The trial court based its finding on the fact Wheeler declined to provide the investigator with the names of his witnesses after he received the disciplinary notice. Wheeler's failure to provide the investigator with witness names served to foreclose the investigator's ability to take statements from the witnesses for presentation to the committee.

We agree with the trial court Wheeler waived his right to call witnesses by refusing to present the investigator with a list of witnesses. Therefore, we find Wheeler's complaint regarding his inability to call witnesses without merit.

REVIEW OF NONCONFIDENTIAL EVIDENCE. Wheeler's complaint that the committee failed to review with him nonconfidential evidence relied on when making their decision is more problematic. This evidence consisted of photographs of the property damaged as a result of the escape attempt and a written statement of Correctional Officer Otto Groenwald concerning a conversation he overheard between Wheeler and another inmate. Wheeler states the committee did not review this evidence with him and the committee admits the the evidence might inadvertently have not been reviewed with Wheeler.

The trial court found the committee's failure to explicitly comply with disciplinary procedure rule III(D)(9)(f), requiring the committee to review nonconfidential evidence with a charged inmate, insubstantial and nonprejudicial.

Wheeler does not dispute the trial courts' conclusion of law that noncompliance with prison rules in prison disciplinary proceedings are judged not by strict compliance standards but by substantial and nonprejudicial standards. See Kelly v Nix, 329 N.W.2d 287, 293 (Iowa 1983).

Wheeler contends the failure of prison authorities to review with him the nonconfidential evidence was a substantial and prejudicial violation of due process.

Mr. Wheeler focuses on the deviations from procedure without attempting to show the prejudice resulting from the deviations. Mr. Wheeler was presented with evidence of the damaged property even if he did not see the photographs of the damage. Prior to his hearing before the district court Mr. Wheeler did receive a copy of Correctional Officer Groenwald's statement and at the hearing he failed to present any support for his claim of prejudice. Additionally, even without Groenwald's statement the committee was presented with ample evidence to support its conclusions. Groenwald's statement served only as corroborating evidence without refuting or addressing any of the confidential information.

Although we do find deviations from the procedural safeguards of prison disciplinary proceedings require close scrutiny to insure the integrity of the process, Mr. Wheeler has failed to provide us with any showing of actual prejudice resulting from the relatively minor deviations occurring during his disciplinary hearing. Consequently, we affirm the district court's decision that the deviations complained of by Mr. Wheeler do not warrant reversal or remand. Bare complaints without a showing of resultant prejudice do not serve to show loss of the integrity of disciplinary proceedings.

THE DUAL ROLE OF THE SECURITY DIRECTOR. Wheeler contends security director Charles Higgins served as both investigator and reporting staff member in contravention of disciplinary procedure rule III(C)(1). Rule III(C)(1) states "[i]nvestigations are to be made as soon as possible after the disciplinary notice has been served and are to be done by a staff person not involved in the reported violation, as either witness or reporting staff person."

The trial court found Wheeler failed to establish any violation of rule III(C)(1) because although Higgins signed the disciplinary notice and served as reporting staff member he did not conduct the investigation of the matter. The record supports the finding Correctional Officer Bukly served as investigating officer.

We agree with the trial court and conclude Wheeler failed to establish any impropriety in the conduct of the officials investigating the claims against him and those evaluating the investigatory findings.

AFFIRMED.