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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-061 / 90-636

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LOREN JASPER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Jones County, William L. Thomas, Judge.

Appeal from district court's denial of postconviction relief in prison disciplinary matters. **AFFIRMED.**

Jean C. Lawrence of Mears, Zimmermann & Mears, Iowa City, for appellant.

Bonnie J. Campbell, Attorney General; Gordon E. Allen, Deputy Attorney General; and William A. Hill, Assistant Attorney General, for appellee.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

PER CURIAM

Prison inmate Loren Jasper sought postconviction relief to challenge two separate prison disciplinary actions. In one action, Jasper had been disciplined for sending a letter to a friend of his mother in which he made false complaints about mistreatment by prison personnel. (Jasper admitted the falsity of the letter but stated he intended only to inspire his mother to write to him.) In the other action, Jasper had been disciplined for participating in an alleged escape conspiracy. (Jasper characterizes the alleged conspiracy as a mere fantasy discussion and denies that any acts were taken in furtherance of a conspiracy.) As a result of these actions, Jasper was disciplined for violating two prison rules, one barring false statements and misuse of communication and one violating institutional rules regarding complicity/planning to commit murder, assault, kidnap, sexual abuse, and threats, as well as gambling. The district court denied postconviction relief, and Jasper has appealed. We affirm.

Jasper challenges the sufficiency of the evidence to support either of the disciplinary actions. He argues that his letter was motivated by private emotional concerns and that his primary intent was not to mislead or deceive anyone about prison conditions; he therefore argues that the falsity of the letter did not constitute a violation of an institutional rule. He also argues that there was no actual escape conspiracy beyond fantasy conversations, and

that the disciplinary committee relied too heavily on inadequate confidential information in finding that there was an actual escape conspiracy. Jasper also contends the contents of his letter to his mother's friend are protected by the first amendment and are therefore not a proper subject for disciplinary action.

Finally, Jasper contends he should have been granted additional due process safeguards, in the disciplinary proceeding concerning an escape conspiracy, because of the difficulty of defending against confidential information. He suggests that he should have been allowed substitute counsel, a polygraph examination, or some unspecified confirmation of the reliability of the confidential information. He argues that in the absence of any such safeguards, the disciplinary action concerning the escape conspiracy denied him due process.

We must first address defendant's first amendment claim as it mandates a de novo review. Williams v. State, 378 N.W.2d 894, 896 (Iowa 1985). A prisoner is not divested of constitutional rights upon confinement in a correctional institution. Hudson v. Palmer, 468 U.S.517, 522 104 S.Ct. 3194, 3198, 82 L.Ed.2d 393, 401 (1984). However, the United States Supreme Court has also recognized:

> The curtailment of certain rights is necessary as a practical matter, to accommodate a myriad of "institutional needs and objectives" of prison officials, chief among which is internal security. Thus, challenges to prison restrictions asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the correctional institution.

Hudson, 468 U.S. at 522-24, 104 S.Ct. at 3198-99, 82 L.Ed.2d at 401-02 (citations omitted). In the case of Guy v. State this court determined there can be a reasonable balance between the first amendment and a disciplinary rule regarding communications. Guy v. State, 396 N.W.2d 197 (Iowa App. 1986). The letter in question propounded false statements with regard to mistreatment by prison officials. Jasper admitted these statements were false. The record shows the intention behind the rule is to hold inmates to the same standard as is expected of all people, that being not to lie. Jasper admitted he lied as well as why he lied. After a thorough review of the record and full consideration of the applicable law before us, we find the defendant's first amendment rights were not violated.

With regard to the remaining issues, the standard of review is whether or not there is "some evidence" in the record to support the committee's decision. Wilson v. Farrier, 372 N.W.2d 499, 502 (Iowa 1985). Upon our review of the record, we find that Jasper's due process rights were protected since "some evidence" was presented to the committee sufficient to sustain Jasper's guilt. Accordingly, we affirm the district court.

AFFIRMED.