FILED
AUG 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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DAVID ENGEL,)
Applicant-Appellee,)
vs.)
STATE OF IOWA,) 9-171
Respondent-Appellant.) 88-1065

Appeal from the Iowa District Court for Jones County (CL140-1087), Larry J. Conmey, Judge.

Appellant sought postconviction relief to challenge the imposition of prison discipline. **AFFIRMED BY OPERATION OF LAW.**

Thomas J. Miller, Attorney General of Iowa, and Layne M. Lindebak, Assistant Attorney general, for respondent-appellant.

Philip B. Mears of Mears, Zimmermann & Mears, Iowa City, for applicant-appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ., but decided en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1987).

AFFIRMED.

For affirmance: Oxberger, C.J., and Schlegel and Hayden, JJ.

For reversal: Donielson, Sackett, and Habhab, JJ.