

IN THE COURT OF APPEALS OF IOWA

No. 6-188 / 95-943

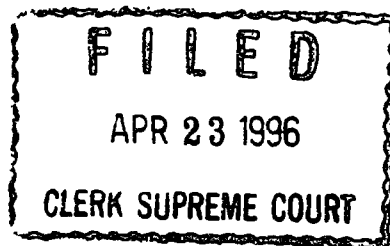
CRAIG GARDNER,

Applicant-Appellant.

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Johnson County, L. Vern Robinson,
Judge.

Craig Gardner appeals the district court ruling granting the State's motion for summary judgment and dismissing his postconviction challenge to prison disciplinary proceedings finding he had violated prison rules. **AFFIRMED.**

Philip B. Mears of the Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Kristin W. Ensign, Assistant Attorney General, for appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

Applicant-appellant Craig Gardner appeals the district court ruling granting the State's motion for summary judgment and dismissing his postconviction challenge to prison disciplinary proceedings finding he had violated prison rules. Gardner contends: (1) the disciplinary report provided insufficient notice of the charges against him; (2) there was insufficient evidence in the record to support the imposition of discipline; and (3) his due process rights were violated when the prison disciplinary committee did not appoint counsel substitute. We affirm.

On June 16, 1993, Gardner, an inmate at the Mount Pleasant correctional facility, received a prison disciplinary notice alleging he had engaged in sexual misconduct against another inmate. Following a hearing, the administrative law judge found Gardner guilty as charged. The prison disciplinary committee imposed a sanction of ten days disciplinary detention, fifteen days administrative segregation, and the loss of sixteen days good time. The disciplinary committee relied on confidential information and Gardner's own statements in reaching its decision.

After exhausting his administrative remedies, Gardner filed an application for postconviction relief. The State filed a motion for summary judgment. The parties agreed the question whether there was sufficient evidence to support the finding could be determined by the trial court making an in-camera inspection of the confidential information before the disciplinary committee. Gardner also contended the prison

disciplinary committee should have honored his request for substitute counsel. Gardner contended this issue could not be resolved by a motion for summary judgment.

The district court granted the State's motion for summary judgment, concluding there was sufficient evidence in the confidential reports to support the disciplinary committee's decision. The court also ruled Gardner was not entitled to counsel substitute to defend himself, noting there was no evidence Gardner was incapable of understanding the disciplinary proceedings. Gardner has appealed.

Gardner first contends he did not receive a notice that sufficiently informed him of the charges against him. Prisoners have the right to due process before a disciplinary sanction takes from them good time credits. *See Wolff v. McDonnell*, 418 U.S. 533, 94 S. Ct. 2963, 41 L. Ed. 2d 935, ___ (1974). One of the requirements is the inmate must receive notice of the charges against him. *See Morris v. Auger*, 414 N.W.2d 858, 860 (Iowa 1987). The notice given to Gardner told him there was information he had been involved in several sexual activities with a named informant in the last couple of weeks in a specified area. The notice went on to state the information received was confidential and release of the information could jeopardize the peace at the institution. Gardener contends the notice was not sufficient because it only told him the name of the other inmate allegedly involved, a two-week time frame when it occurred, and the place it occurred.

The question is whether this notice was sufficient to allow Gardner to present witnesses and documentary evidence. Gardner does not argue against the use of confidential information. We find the notice was sufficient.

Gardner next contends, because he was denied access to the confidential reports, it was not possible for him to challenge the reliability of the information.

There must be "some evidence" to support a disciplinary committee's findings. *Superintendent v. Hill*, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 345 (1985). When confidential information from an inmate informant is received, there must be more than just one statement. *Freitas v. Auger*, 837 F.2d 806, 810 (8th Cir. 1988). As has the trial court, we have reviewed the information and find it sufficient.

Gardner's last contention is he should have been afforded counsel substitute because counsel substitute could have been provided access to the confidential information and could have examined the institutional record to determine whether he had an alibi. He contends this is a constitutional issue. We review de novo. *Picard v. State*, 339 N.W.2d 368, 373 (Iowa 1983); *Kinnersely v. State*, 494 N.W.2d 698, 699 (Iowa App. 1993). This argument has been rejected. See *Backstrom v. State*, 508 N.W.2d 705 (Iowa 1993). We agree with the trial court's findings on this issue.

We affirm.

AFFIRMED.