IN THE COURT OF APPEALS OF IOWA

No. 7-087 / 96-0587

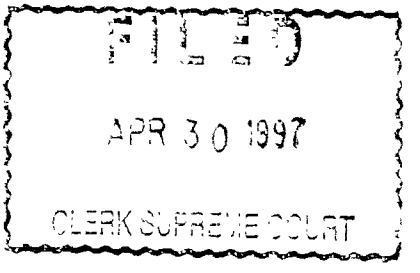
JASON CHRISTO,

Applicant-Appellee,

vs.

STATE OF IOWA,

Respondent-Appellant.



Appeal from the Iowa District Court for Calhoun County, Kurt L. Wilke, Judge.

The State appeals the district court ruling granting partial postconviction relief to Jason Christo. **AFFIRMED**.

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

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellee.

Heard by Habhab, C.J., and Huitink and Streit, JJ.

HABHAB, C.J.

On April 12, 1995, the warden of the North Central Correctional Facility (NCCF) ordered that urinalysis drug screening be performed upon several inmates. Jason Christo, an inmate at NCCF, was ordered to produce a urine sample for testing. Under NCCF rules, an inmate must provide a urine sample within two hours of the request; otherwise, the inmate is considered to be in violation of the rule against inmate possession of drugs, a Class I offense.

Christo attempted several times to provide a urine sample but was unsuccessful. Christo maintained he was unable to provide a sample when under observation by others. This problem had never previously arisen during his incarceration at NCCF. Due to his failure to provide a sample, prison disciplinary proceedings were initiated against him.

During the investigation, Christo maintained his innocence and claimed he was physically incapable of providing a sample while under observation. He also explained this had happened to him in the past. A reporting staff member reported Christo stated he had a need to urinate but could not do so in the presence of others.

At the hearing, Christo testified the administrative law judge (ALJ) denied his request to obtain additional evidence from the army and from a residential treatment facility in Council Bluffs. He testified the ALJ denied his request as irrelevant, as the information requested was from outside the facility. The ALJ indicated in his administrative record that a request for witnesses was not made.

Christo was ordered to serve ninety days disciplinary detention. Additionally, he lost sixteen days of good time and was ordered to be transferred to a higher security institution.

After exhausting the appropriate administrative remedies, he filed a timely application for postconviction relief. He claimed, among other things, his due process rights were violated when his witnesses were prevented from testifying at the prison disciplinary hearing. The district court rejected other grounds for postconviction relief, but ruled Christo's due process rights were violated when the witnesses were not allowed to testify. The State has appealed.

When a postconviction applicant asserts a violation of constitutional safeguards, we make our own evaluation based on the totality of the circumstances in a de novo review. *See Webb v. State*, 555 N.W.2d 824, 825 (Iowa 1996).

Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply. *Hughes v. State*, 543 N.W.2d 872, 874 (Iowa 1995) (citing *Wolff v. Mcdonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974)). However, a prisoner charged with violating a prison regulation which may result in the loss of "good time" credit is entitled to minimal due process protections. *Id.* (citing *Wolff*, 418 U.S. at 566, 94 S. Ct. at 2979, 41 L. Ed. 2d at 956). Chief among these protections is the right of an inmate to call and present witnesses and documentary evidence in his defense before the disciplinary board. *Id.* (citing *Wolff*, 418 U.S. at 566, 94 S. Ct. at

2979, 41 L. Ed. 2d at 956). However, "the inmate must make a specific request to the investigator before the investigator is required to search for or obtain statements from witnesses." *Id.* at 876.

We agree with the State that the trial judge ruled in favor of Christo only on the issue of witnesses. From that ruling and the appellate briefs, we believe the central issue before us is whether the applicant requested that the investigator obtain statements from specific witnesses. We limit our ruling to that sole issue.

It is settled law that inmates have a right to call witnesses on their behalf but not to confront or cross-examine them. *Wolff v. Mcdonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). However, it is the inmate's responsibility to timely name witnesses he or she relies on to refute allegations of prison rule violations. It goes without saying that until such naming takes place, the investigator is unable to search for and obtain witnesses' statements.

After a careful review of the totality of the circumstances, we affirm the decision of the district court. There is testimony Christo had problems in the past with providing urine specimens and he further testified that he named witnesses who would verify this fact. The ALJ testified Christo made no such request; however, he admitted he had no independent recollection of the hearing and his testimony was based on his standard policies rather than from his own recollection of Christo's hearing. To buttress Christo's position, the trial court also noted the disciplinary

report considered by the ALJ did set forth Christo's statements to the guards regarding his inability to provide urine samples on other previous occasions.

We conclude Christo has carried his burden. Thus, he has been denied his fundamental right to due process.

AFFIRMED.