

IN THE COURT OF APPEALS OF IOWA

No. 6-008 94-2049

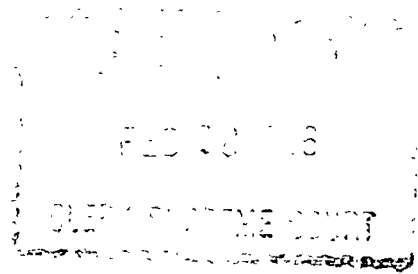
GREGORY PAYNE,

Applicant-Appellant.

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Jones County, Van D. Zimmer, Judge.

Gregory Payne appeals the district court's denial of his application for postconviction relief from his prison discipline. **AFFIRMED.**

Kelly A. Phipps of the Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Layne M. Lindebak, Assistant Attorney General, for appellee.

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

SACKETT, P.J.

Applicant-appellant Gregory Payne appeals the district court's denial of his application for postconviction relief from discipline imposed on him following a fight in a living unit at the State Reformatory in Anamosa. Payne argues: (1) there was not sufficient evidence he was guilty of violating rules; (2) the rules he allegedly violated are unconstitutional; (3) he should not have been found guilty of violating rule 25 because he could not leave the area without being drawn into the fight; and (4) the disciplinary committee did not demonstrate the confidential informants were reliable. We affirm.

On February 2, 1994, a fight broke out in Living Unit B at the Iowa Men's Reformatory in Anamosa. Payne was in the area during the fight and, as a result, received a notice charging he had violated prison rules, including rule 25 in that he was present at the scene of a confrontation, and rule 27 in that he was guilty of obstructive and disruptive conduct. The notice said the identities of the people who provided confidential information were deleted from the report.

Payne admitted he was present during the fight. He contends he did not participate in it. Following a hearing, the disciplinary committee found Payne guilty of violating rules 25 and 27. The disciplinary committee relied on evidence from confidential sources it found reliable and Payne's admission he was present. The committee noted Payne's presence added to the number of inmates to be dealt with and contributed to a dangerous situation. The committee determined Payne should

serve ten days in disciplinary detention. ninety days in disciplinary detention on level I. and lose sixteen days of good conduct time.

Payne exhausted his administrative appeals. He then filed an application for postconviction relief in the district court. Following a hearing, the district court denied Payne's application.

The first question is whether there is sufficient evidence Payne was guilty of violating rule 25. Payne was sitting on a bench waiting for his cell to be opened when a fight broke out in the area. Payne was authorized to be in the area until the fight broke out. There was evidence Payne went to the area because he knew there would be a fight. We agree with the State this evidence supports a finding Payne's presence was not authorized.

Payne next argues rules 25 and 27 are unconstitutionally vague because they do not sufficiently inform an inmate he or she can be disciplined for being present in an authorized area when a fight breaks out.

Disciplinary rules in a penal institution must be intelligible. *Carter v. State*, 537 N.W.2d 715, 717 (Iowa 1995); *Fichtner v. Iowa State Penitentiary*, 285 N.W.2d 751, 759 (Iowa 1979). The rules are presumed to be valid, and we seek an interpretation that supports a finding the rule is constitutional. *See Leonard v. State*, 442 N.W.2d 274, 275 (Iowa App. 1989). The rule must give a person of ordinary intelligence fair notice of what is prohibited and it must provide an explicit standard for those who apply it. *Winnett v. State*, 472 N.W.2d 625, 627 (Iowa App. 1991); *see*

Williams v. Nix, 1 F. 3d 712, 716 (8th Cir. 1993); *Reysack v. State*, 440 N.W.2d 392, 394 (Iowa 1989).

The State contends the rules challenged are specific in that a person of ordinary intelligence should know he or she should not put himself or herself in a position to be involved in a fight. Rule 27(c) gives as an example that "participating in unauthorized . . . gatherings . . ." is prohibited.

The rules are sufficiently clear to give Payne notice he should not gather in an area where a fight may break out. Payne's claim on this issue is without merit.

Payne also asserts he should not have been found guilty of unauthorized presence because, once the fight broke out, he could not leave the area without being drawn into the fighting. We need not address this issue because there was a finding supported by evidence that Payne went to the area knowing a fight was to break out.

Finally, Payne contends the disciplinary committee did not demonstrate the confidential information relied upon in its findings was sufficiently reliable. We have reviewed the confidential information, and we find it sufficiently reliable.

AFFIRMED.