

IN THE COURT OF APPEALS OF IOWA

No. 2-075 / 91-591

FILED

MAR 24 1992

CLERK SUPREME COURT

SHERMAN WHITE, JR.,

Appellant,

391

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Lee County,
John C. Miller, Judge.

White appeals district court denial of postconviction
relief in a prison disciplinary matter. **AFFIRMED.**

John M. Wright of Napier, Wright & Wolf, Fort Madison,
for appellant.

Bonnie J. Campbell, Attorney General, and William Hill
and Layne M. Lindebak, Assistant Attorneys General, for
appellee.

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

SCHLEGEL, J.

Sherman White is an inmate at the Iowa State Penitentiary. On October 27, 1989, correctional officer Gully saw White lying on the floor in the library. Gully observed another inmate, Peniman, standing in front of White apparently trying to hide whatever White was doing. At the time of this incident there were approximately twenty inmates in the library.

Gully cleared the library, and approximately ninety minutes later he searched the library. He found an 11 1/4 inch steel "shank" (homemade knife) on a bottom shelf behind some books. Gully had to lie on the floor in the same manner as did White in order to retrieve the shank.

White was charged with violating disciplinary rule nine which states: "An inmate commits an offense under this subsection when the inmate possesses, uses, or has under the inmate's control or in the inmate's custody an item defined as dangerous contraband." The disciplinary committee imposed fifteen days disciplinary detention, loss of 365 days good time, and restriction in the maximum security cell house for one year. After exhausting his administrative appeals, White sought postconviction relief in the district court. The court denied such relief. White appeals.

Our scope of review is de novo. Gladson v. State, 439 N.W.2d 214, 215 (Iowa App. 1989) (citing Kelly v. Nix, 329 N.W.2d 287, 291 (Iowa 1983)). On the issues before us, the

United States Supreme Court has stated "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Superintendent v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356, 365 (1985). Our sole concern is whether there is any evidence at all to constitute a basis in fact for the action taken by the prison officials. Wilson v. Farrier, 372 N.W.2d 499, 501-02 (Iowa 1985) (citation omitted).

White contends (1) there was not sufficient evidence to find he violated rule nine; (2) Gully failed to take corrective action immediately; (3) the disciplinary report did not list all witnesses; (4) he was not given the opportunity to view the shank; and (5) he was denied staff assistance in identifying witnesses. We find there is some evidence to support the disciplinary committee's actions.

The committee relied on Officer Gully's written report and verbal statements that he saw White lying on the floor of the library, another inmate was attempting to hide his action, and Gully had to lie on the floor, in the same manner as White, to retrieve the knife. Gully testified no one went into the area during the ninety-minute period between the time he saw White on the floor and the time he began to search. We find there is sufficient evidence to find White violated rule nine by having dangerous contraband under his control.

In addition, we determine White was not prejudiced by Gully's failure to take immediate action. White's supine position did not appear to be misconduct until Gully conducted the search. Because testimony shows no other inmates were in the area during the ninety-minute period, White has not been prejudiced; there is evidence to tie White to the shank.

We also find the disciplinary report was adequate. The purpose of such a report is to "inform [the inmate] of the charges and enable him [or her] to marshal the facts and prepare a defense." Wolff v. McDonnell, 418 U.S. 539, 564, 94 S. Ct. 2963, 2979, 41 L. Ed. 2d 935, 956 (1974). White claims his rights were violated because the names of all witnesses and the pertinent details concerning the disposition of the shank were not included in the disciplinary notice. The district court found the failure to name all possible witnesses did not prejudice White. We agree. Though White said eighteen or twenty other inmates were present, there is no indication these people were witnesses to the incident. The two "witnesses" named by White did not see the incident. The record does not disclose that there are other people involved who could or should have been named by Gully who were not listed.

The district court also found the failure of the reporting officer to indicate the location of the contraband was not prejudicial. The purpose of the requirement that the location of the evidence be included

in the report is so that the hearing officer will have access to it.

White was shown a photocopy of the shank. He claims his rights were violated because he was denied "the chance to point out any defects in the accusation that the homemade knife was his." We agree with the district court finding that any error was insubstantial and nonprejudicial. See Kelly, 329 N.W.2d at 294.

Finally, White argues he should have been given staff assistance to identify the other inmates in the library. Again we note there is no indication in the record that other actual witnesses besides White, Peniman, Gully, and the inmates who were asked to give written statements exist. We do not feel staff assistance would have been able to turn up any more relevant information than did White; White was only able to name two people he felt were witnesses.

For these reasons, we find there is some evidence to support the disciplinary committee's decisions. We affirm the district court.

AFFIRMED.