IN THE COURT OF APPEALS OF IOWA

No. 7-074 / 96-0250

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GARY LEE DAVIS,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
MAY 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, David M. Remley, Judge.

The applicant appeals from the district court's ruling denying him postconviction relief from prison discipline. **AFFIRMED.**

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

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

Considered by Habhab, C.J., and Streit, J., and Hayden, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

PER CURIAM

Gary Davis, a prisoner at the Men's Reformatory in Anamosa, appeals the denial of his application for postconviction relief. We affirm.

After a strong smell of marijuana was detected in the cell area where Davis was housed, a correctional officer requested a urine sample from him pursuant to Rule 20, which provides it is a violation of the rule not to provide a urine sample within two hours of a request. When Davis did not provide a sample within two hours of the request, the officer cited him for violating the rule.

An investigator contacted Davis and asked him if he wanted any witnesses to attend the disciplinary hearing. Davis replied he wanted his medical records available at the hearing to support his claim liver and kidney problems prevented him from providing a sample. His medical records were not provided to the disciplinary committee, however, but Davis did explain his medical problems to the committee. The committee ruled Davis violated Rule 20, and ordered disciplinary detention and a loss of sixteen days good conduct time.

Davis appealed the decision of the committee. Ultimately, Davis' medical and school situation prompted the warden to reduce the amount of disciplinary detention but not to vacate the committee's finding of a rule infraction.

Davis filed an application for postconviction relief. In his application, Davis raised two arguments: (1) Rule 20 constituted an unconstitutional irrebuttable presumption, and (2) failure to provide his medical records violated his constitutional

due process right to present evidence in his own defense. At the hearing on his application, Davis withdrew his first claim, but pressed the second through his testimony and that of the hearing officer. The district court denied his application, and from that denial Davis appeals.

I. "Proceedings for postconviction relief are special proceedings treated as an action at law." *Hughes v. State*, 543 N.W.2d 872, 874 (Iowa 1995). When a prisoner claims that he was disciplined in violation of his constitutional rights, however, we review the claim " 'in light of the totality of the circumstances upon which the postconviction court's ruling was made.' " *Mark v. State*, 556 N.W.2d 152, 153 (Iowa 1996) (quoting *James v. State*, 541 N.W.2d 864, 869 (Iowa 1995)). This is functionally equivalent to de novo review. *Id.*

II. Initially, we observe this case is not properly before us for review. In his application, Davis stated the failure to provide his medical records to the committee violated his right to present evidence in his own behalf. At the hearing on his application, Davis' testimony focused on the attempts to secure those records and his reasons for doing so. His attorney questioned the hearing officer who presided over the disciplinary hearing, and focused on the request for medical records and whether those records, if provided, would have been helpful to Davis' defense. In closing argument, Davis' attorney argued Davis had a constitutional right to present evidence in his own defense.

The trial court ruled sufficient evidence supported the finding of the disciplinary committee, citing two cases that address sufficiency of evidence but not the right to present witnesses and documentary evidence. *See Backstrom v. Iowa Dist. Ct.*, 508 N.W.2d 705 (Iowa 1993) (en banc); *Wilson v. Farrier*, 372 N.W.2d 499 (Iowa 1985). Davis did not file a Rule 179(b) motion and thereby failed to bring this omission to the trial court's attention.

The issue we raise is whether the failure to file a Rule 179(b) motion failed to properly preserve this issue for review. We hold it does.

Rule 179(b) provides that a party may file a post-trial motion to enlarge or amend the findings and conclusions, modify the judgment or decree, or substitute a different judgment or decree. Iowa R. Civ. P. 179(b). Our case law instructs that, in order to preserve an issue for appeal, a party raising an issue must file a Rule 179(b) motion asking the trial court to rule on an issue when the trial court does not rule on an issue properly raised. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). Filing a motion in these circumstances is "essential." *Rouse v. Union Twsp*, 530 N.W.2d 714, 717 (Iowa 1995). The motion is necessary because "[i]ssues must ordinarily be presented to and passed upon by the trial court before they may be raised and adjudicated on appeal." *Benavides*, 539 N.W.2d at 356. This rule is well settled in our jurisprudence. *E.g.*, *Rouse v. Union Twsp*, 530 N.W.2d 714, 717 (Iowa 1995); *Donald Newby Farms, Inc. v. Stoll*, 543 N.W.2d 289, 292 (Iowa App. 1995).

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The issue of whether the disciplinary committee's failure to provide Davis' medical records violated his due process right to present testimony of witnesses and documentary evidence was properly raised in the proceedings before the trial court. The trial court did not rule on this issue, and because Davis did not file a Rule 179(b) motion, this issue is not properly before us.

Even though this issue has not been preserved for appellate review, we will adddress it.

"[P]rison officials have broad administrative and discretionary authority over the prisons they manage [while] incarcerated persons retain only a narrow range of protected liberty interests." *Hewitt v. Helms*, 459 U.S. 460, 467, 103 S. Ct. 864, 869, 74 L. Ed. 2d 675, 685 (1983). Imprisonment carries with it the loss of many significant rights. *Hudson v. Palmer*, 468 U.S. 517, 524, 104 S. Ct. 3194, 3199, 82 L. Ed. 2d 393, 401 (1984). Prison officials must provide the appropriate level of due process before they promulgate a disciplinary decision that deprives the prisoner of a protected liberty interest. *Ryan v. Sargent*, 969 F.2d 638, 640 (8th Cir. 1992). Because prison disciplinary proceedings are not part of a formal criminal prosecution, the full panoply of rights triggered in those proceedings does not apply. *Hughes v. State*, 543 N.W.2d 872, 874 (Iowa 1995). Instead, only minimal due process protections are required, including the right to call and present witnesses and documentary evidence. *Id.*

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Our decision in *Bradham v. State*, 476 N.W.2d 369 (Iowa App. 1991) is instructive. In *Bradham*, an inmate requested the presence of three witnesses at his disciplinary hearing. *Id.* at 373. The committee examined written statements by two of the witnesses, but the third witness was never contacted. *Id.* We held no due process violation occurred by the substitution of written statements for live testimony, and directed the third witness be contacted and a written statement prepared if the testimony of the witness would not add to the evidence.

In this case, Davis explained his medical condition to the committee. His medical records may have provided some corroborative evidence, but the committee gave a written statement the records were not needed because Davis eventually did urinate. Our decision in *Bradham* demonstrates some flexibility must be accorded to the form and manner in which evidence is presented. We hold the omission of the medical records from the disciplinary committee hearing did not amount to a violation of Davis' due process rights.

AFFIRMED.