

IN THE COURT OF APPEALS OF IOWA

No. 3-245 / 92-1037

FILED

JUN 29 1993

CLERK SUPREME COURT

IRVIN E. JOHNSON,

Appellant,

vs.

STATE OF IOWA,

Appellee.

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

The applicant appeals the district court's denial of
his application for postconviction relief from prison
disciplinary action. **AFFIRMED.**

Peter W. Hansen of Hildreth & Hansen, Burlington, for
appellant.

Bonnie J. Campbell, Attorney General, and Layne
Lindebak, Assistant Attorney General, for appellee.

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

DONIELSON, P.J. 000136

Irvin Johnson is an inmate at the Iowa State Penitentiary. In August 1991, a disciplinary report found Johnson had struck another inmate in the face several times. Two other inmates indicated Johnson was merely involved in "horseplay." The inmate who received the blows had no comment.

The prison disciplinary committee found Johnson guilty of violating rule 27 of the Iowa State Penitentiary. Rule 27 concerned obstructive and disruptive conduct. The committee sanctioned Johnson with thirty days of disciplinary detention and the loss of 365 days of good time. The committee also restricted him to the maximum security cell house for one year. He subsequently appealed the decision to the Warden and to the Iowa Director of Corrections. He then filed an application for postconviction relief with the district court. In June 1992, the district court upheld the discipline imposed by the committee and dismissed Johnson's application.

Johnson now appeals. Johnson contends the sanctions imposed should be set aside because the disciplinary committee violated his constitutional right to due process. He also claims the sanctions imposed violated his right to equal protection.

Where fundamental constitutional questions are involved, we review the case de novo in the light of the

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totality of circumstances involved. Picard v. State, 339 N.W.2d 368, 373 (Iowa 1983).

I. Whether Johnson was Denied Due Process. Johnson first contends the discipline should be set aside because the sanctions imposed by the disciplinary committee violated his right to due process. Specifically, Johnson argues the committee's decision to discipline him with thirty days of disciplinary detention and the loss of 365 days of good time was imposed arbitrarily and capriciously.

Due process protects an inmate from the arbitrary action of prison officials who wish to deprive him of good time through prison discipline. Wolf v. McDonnell, 418 U.S. 539, 557, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974). The requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. Superintendent v. Hill, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356, 365 (1985). Any evidence which supports the prison's actions is sufficient to uphold the decision. Leonard v. State, 442 N.W.2d 274, 275 (Iowa App. 1984).

Rule II(G)(27) identifies a violation of rule 27 as a Class I offense. Rule II(D) lists the permissible sanctions which may be imposed a finding of a rule violation of a Class I offense. Rule II(D)(1) states a hearing officer may order the forfeiture of any or all good conduct time earned. Rule II(D)(2) states disciplinary

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detention in excess of fifteen days is limited in part to "cases of serious and dangerous violence of attempted violence directed at other persons."

Based on the observations of the correctional officer, the committee found Johnson struck the other inmate in the face and mouth area. The inmate who was hit would not comment on the incident. It was thus reasonable for the committee to conclude Johnson's conduct was more dangerous than mere "horseplay." Therefore, we find the evidence supports the decision of the committee to discipline Johnson with thirty days of disciplinary detention and the loss of 365 days of good time. These sanctions were not imposed arbitrarily or capriciously. We conclude Johnson was not denied due process.

II. Whether Johnson was Denied Equal Protection.

Johnson also contends the discipline should be set aside because the sanctions imposed by the committee violated his right to equal protection. Specifically, Johnson argues he received harsher sanctions on the basis of his race. He points to evidence that, over the same time period in which he was sanctioned, there were four white inmates also found guilty of violating rule 27. Those four inmates all received lesser sanctions (ten days disciplinary detention, sixteen days loss of good time, and ten days restriction to the maximum security cell house).

Unequal treatment of inmates on the basis of race is constitutionally impermissible. Lee v. Washington, 390

U.S. 333, 88 S. Ct. 994, 19 L. Ed. 2d 1212 (1968). "An essential element of any equal protection challenge is that the alleged invidious discrimination must be against one person and in favor of another person or class of persons with no rational basis for any differentiation in treatment." State v. Kyle, 271 N.W.2d 689, 692 (Iowa 1978) (citations omitted). The burden is on Johnson to prove the existence of intentional discrimination. Whitus v. Georgia, 385 U.S. 545, 550, 87 S. Ct. 643, 646, 17 L. Ed. 2d 599, 603-04 (1967). To establish such discrimination, Johnson must establish the sanctions imposed in this case had a discriminatory effect and that the decision was motivated by a discriminatory purpose. Wayte v. United States, 470 U.S. 598, 608, 105 S. Ct. 1524, 1531, 84 L. Ed. 2d 547, 556 (1985).

Johnson compares the sanctions imposed on him to those imposed on inmate Gustafson, who is white, following a violation of rule 27. Gustafson received ten days disciplinary detention and a loss of sixteen days good time. One correctional officer observed Gustafson and another inmate were "pushing each other" and "appeared agitated." The committee found that although Gustafson had engaged in "horseplay," his conduct potentially could result in more serious problems. In light of this evidence, the prison authorities could have determined Gustafson's conduct in this particular instance was less disruptive and less violent and therefore they imposed

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lighter sanctions. Johnson has failed to describe the conduct for which the other inmates were disciplined under rule 27.

From our review of rule II(D) and the above evidence, it is clear the severity of the inmate's conduct in violating rule 27 affects the degree of sanctions imposed. Rule II(D) also gives prison authorities discretion in determining what degree of sanctions is warranted. Johnson has failed to demonstrate any credible evidence that the particular sanctions imposed on Johnson for a violation of rule 27 constituted intentional discrimination. We conclude Johnson was not denied equal protection.

The costs of this appeal are taxed to Johnson.

For the reasons stated, we affirm the judgment of the district court.

AFFIRMED.