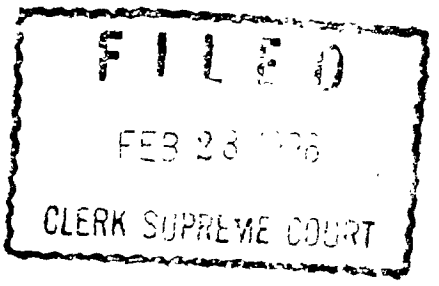
IN THE COURT OF APPEALS OF IOWA



No 5-655 / 94-1814

HERBERT SPELLER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Lee County, William Dowell, Judge.

Speller appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Philip B. Mears 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 Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

On June 22, 1992, Herbert Speller was found guilty of violating prison rule 27 which prohibits disruptive conduct. The disciplinary committee imposed the sanctions of fifteen days disciplinary detention, loss of 180 days good conduct time, and restriction to a cell in the maximum security cell house for six months.

The charge stemmed from an incident which occurred on June 10 in the visiting area of the correctional center where Speller was imprisoned. Present in the visiting area were Speller and his wife, inmate Manning and his wife, and two other women apparently waiting to see inmates. It was reported Speller and his wife were both in the inmate's bathroom at some point during the visit. When correctional officers attempted to terminate visitation because of this conduct, Speller became disruptive.

Prior to the disciplinary hearing, Speller told investigator Rueben Baker he wanted witness statements from his wife, the Mannings, and the two female visitors who were present when the alleged violation occurred. Speller's wife wrote a statement, inmate Manning did not wish to make a statement, and Baker did not contact the other three witnesses. At the hearing Speller requested his witnesses appear in person. This request was denied because the witnesses were either correctional center inmates or outsiders whose presence at the facility would breach security. Speller then requested the two correctional officers, Carter and Wilkins, involved in the incident appear as witnesses. This request was denied because it was untimely.

Speller exhausted his administrative appeals. He filed an application for postconviction relief in the district court. Speller alleged he was denied his right to call witnesses in violation of both a prison rule and the United States Constitution. The district court denied Speller's application. The court found the refusal to allow live witnesses was justified. Allowing live witnesses would have been a breach of security because the witnesses were either inmates of the John Bennett Correctional Center or lay witnesses both of which do not reside in the Iowa State Penitentiary. The court also found Speller did not timely request written statements from witnesses Carter and Wilkins. As such, the refusal to allow their testimony was not a violation of prison rules or the Constitution. Lastly, the court found the investigator made reasonable efforts to identify the two women in the visiting area but Speller did not provide the investigator with sufficient information from which to identify and locate them. As such, the failure to obtain their statements was not a violation of prison rules or the Constitution.

Speller appeals. He argues his right to call witnesses was violated because (1) investigator Baker made no attempt to contact the two female visitors or Mrs. Manning in order to obtain their statements and (2) the committee refused to obtain statements from the two correctional officers, Carter and Wilkins, and also failed to call them as witnesses.

I. Standard of Review.

Ordinarily, our review of postconviction relief proceedings is for errors of law *Giles v.* State, 511 N.W.2d 622, 626 (Iowa 1994); *Hinkle v. State*, 290 N W 2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards, we make our own evaluation based on the totality of the circumstances. *Id.* This is equivalent to de novo review. *Id.* The issue presented by Speller involves violation of constitutional safeguards. As such, our review is de novo.

II. Merits.

A prisoner has a due process right at a disciplinary hearing to call witnesses and present written evidence. *Mahers v. State*, 437 N.W.2d 565, 568 (Iowa 1989). This right, however, is not unlimited. *Id.* An inmate is only permitted to call witnesses when doing so will not be unduly hazardous to institutional safety or correctional goals. *Id.* An inmate does not have the right to confront or cross-exam witnesses against him because confrontation and cross-examination present grater hazards to institutional interests. *Id.* Furthermore, a disciplinary committee does not have to consider testimony which is irrelevant or not reasonably necessary to resolve the conflict. *See Brown v. Frey*, 889 F.2d 159, 167 (8th Cir. 1989) (prison officials have broad discretion to reject an inmate's request to call witnesses in order to exclude irrelevant or unnecessary testimony); *Pierce v. State*, 433 N.W.2d 38, 40 (Iowa App. 1988) (inmate's rights were not violated by the disciplinary committee not considering

testimony of a witness where the testimony was not reasonably necessary to resolve the conflict)

In this case, Speller argues his due process right to call witnesses was violated when the disciplinary committee failed to get statements from another inmate's wife, Mrs. Manning, two unknown woman visitors present at the time of the alleged violation, and two staff witnesses. With respect to the failure to get the testimony of the two staff witnesses, Carter and Wilkins, we find Speller's claim without merit. According to prison rules, an inmate must notify the investigator of his intention to call a witness and the name of the witness *at the time of the investigation*. Speller, however, did not request statements from these two witnesses until the time of the hearing. As such, the request was untimely. In addition to his failure to make a timely request, Speller is also not entitled to have the two officers as witnesses because, as the district court stated, Speller's "request with respect to the correctional officers appears to be a veiled attempt to confront and cross-examine witnesses." Inmates, however, do not have the right to confront or cross-examine witnesses against them. *See Mahers*, 437 N.W.2d at 568. For the above reasons, we conclude Speller's due process rights were not violated when the committee failed to get statements from staff witnesses, Carter and Wilkins.

Speller also claims his due process rights were violated when the disciplinary committee failed to get statements from the two unknown woman visitors. Although

Speller made a timely request to the investigator to take the statements of these two women. Speller did not provide the names or other identifying information about the women. According to prison regulations, "Failure of the accused inmate to name witnesses to be interviewed by the investigating officers will result in no further opportunity for the investigating officer to take the statements from such witnesses . . . ." The disciplinary committee can deviate from this rule if "the inmate can convince the Disciplinary Committee" (1) the identity of the witness was unknown prior to the inmate's interview with the investigation officer and (2) substantial prejudice would result without witnesses being contacted for a statement. As the district court noted, however, there is no evidence Speller attempted to convince the disciplinary committee to deviate from this rule. Even if such attempt had been made, substantial prejudice did not result from the failure to obtain statements from these witnesses.

Furthermore, we agree with the district court's conclusion the investigator made reasonable efforts to identify the two woman in the visiting area, but with no name or other identifying information was unable to accomplish this goal. As the district court noted, the record does not contain any showing as to how an investigator would know which persons were present at a given time in the visiting area. Without such a showing, the court cannot conclude the investigator had sufficient information to

identify and locate the female witnesses. As such, we determine Speller's due process rights were not violated when statements were not taken from the two female witnesses.

Lastly, Speller also argues his right to call witnesses was violated when the committee failed to get a statement from Mrs. Manning. We agree with the trial court's conclusion Mrs. Manning's testimony would have been cumulative and would not have added any important information to the proceedings. Our court has held an inmate's rights were not violated by the disciplinary committee's failure to consider testimony which was not reasonably necessary to resolve the conflict. *Pierce*, 433 N.W.2d at 40. Speller has never asserted Mrs. Manning would testify as to matters which were not already in evidence at the disciplinary proceedings. Because Mrs. Manning's testimony was cumulative and not reasonably necessary to resolve the conflict, Speller's right to call witnesses was not violated.

For the above-stated reasons, we conclude Speller's constitutional due process rights were not violated by the committee's failure to get statements from the above-mentioned witnesses. Therefore, we affirm.

AFFIRMED.